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No. ——

Office - Supreme Court, U.S.
FILED
JAN 20 1984
ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FRANK A. FORD, ETC., *et al.*,
Appellants,

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Appellees.

On Appeal from the Supreme Court of the State of Florida
(Alternative Petition for Certiorari)

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

PRELIMINARY STATEMENT Appellants believe the first question presented herein to be appealable. The second question, which concerns the main federal question issue decided below, standing alone would be reviewable only by certiorari. If the Court accepts appeal jurisdiction, then appellants also seek review of the second question, since both questions arise under the judgment sought to be reviewed. However, favorable review of the second question, which is the more important question to appellants, may render the first moot. If the Court deems the appeal to have been taken improvidently, then appellants respectfully request that the Notice of Appeal and this Jurisdictional Statement be considered as a Petition for Certiorari pursuant to 28 U.S.C. Section 2103.

I.

Whether Section 194.192(2), Florida Statutes, insofar as the same requires imposition of personal liability against a taxpayer consequent upon unsuccessful litigation of the validity of an ad valorem tax assessment of mineral or other subsurface rights, is void for denial of equal protection required by the Fourteenth Amendment of the Constitution of the United States, when the statute authorizing such taxation, being Sec. 193.481(1), Florida Statutes, specifically provides that such taxation shall be against the subsurface interests and not against the owner or owners thereof.

II.

Whether there is a denial of Fourteenth Amendment equal protection to taxpayers whose mineral and other subsurface rights are assessed and taxed pursuant to law (Sec. 193.481, Florida Statutes) in one county while substantially all similar property is not assessed and taxed in other counties in a multi-county taxing district, where

the state has enacted mandatory laws for achievement of uniform assessments in ad valorem taxation and created a Department for administration of the laws, and where the Department fails and refuses to perform its duty of supervision to require compliance by county appraisers with the particular law and condones systematic and deliberate refusal to comply with that law.

Under the same circumstances, whether there is a denial of Fourteenth Amendment equal protection to taxpayers whose property is valued and taxed in one county at a level higher than the general level of assessments of substantially all similar property in other counties in a multi-county taxing district.

LIST OF PARTIES

The civil actions below were brought to contest tax assessments. The taxpayers may be aligned on one side and the taxing authorities on the other. The taxpayers are:

1. FRANK A. FORD
2. BERENICE A. FORD
3. EMMA G. FORD
4. EUGENE M. SPEER
5. MYRTLE E. SPEER
6. HAROLD T. CHITTUM, JR.
7. BETTY J. CHITTUM
8. HAROLD T. CHITTUM, JR., TRUSTEE
9. BARBARA ANN BRAME
10. R. J. FULLER
11. RUDMAN RESOURCES, INC., a corporation

The taxing authorities are:

1. RANDY MILLER, as Executive Director of the Department of Revenue of the State of Florida.

2. JOHN W. TURNER, JR., Property Appraiser of Volusia County, Florida.

3. DAVID EDWARDS, Tax Collector of Volusia County, Florida.

4. COUNTY OF VOLUSIA, a Political Subdivision of the State of Florida.

5. In some cases, predecessors in office were parties in place of the above named parties, and in some cases members of Boards of Tax Adjustment in such capacity were named as parties.

Counsel on this Jurisdictional Statement have represented the FORD and the SPEER-CHITTUM-BRAME taxpayers, but not the R. J. Fuller and Rudman Resources, Inc. taxpayers.

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On Appeal from the Supreme Court of the State of Florida (Alternative Petition for Certiorari)

JURISDICTIONAL STATEMENT

REFERENCE TO REPORTS OF OPINIONS BELOW

Department of Revenue v. Ford, 438 So.2d 798 (Fla. 1983) (Appendix 1a-11a).

Florida Department of Revenue v. Ford, 417 So.2d 1109 (Fla. 5th DCA 1982) (Appendix 12a-32a).

The Final Judgment of the Circuit Court of Volusia County, Florida, dated 18 November, 1980, was not reported. (Appendix pp. 33a-58a).

GROUNDS ON WHICH JURISDICTION IS INVOKED

Nature of the Proceeding

This cause is on appeal of a judgment of the Supreme Court of the State of Florida (Alternative Petition for Certiorari). Final judgment of the trial court against

the taxpayers was reversed by the Fifth District Court of Appeal of Florida. The Supreme Court of Florida reversed the Fifth District Court of Appeal and ordered reinstatement of the final judgment with regard to matters involved herein.

Date of Entry of Judgment

The judgment sought to be reviewed was entered September 8, 1983. (App. 1a). Rehearing was denied November 4, 1983. (App. 59a). Notice of appeal was filed in the Supreme Court of Forida December 22, 1983. (App. 60a).

Statutory Basis of United States Supreme Court Jurisdiction

I

Jurisdiction is conferred on this Court by 28 U.S.C. § 1257(2) in that the opinion and judgment of the Florida Supreme Court, in reinstating the trial court judgment, necessarily draws in question the validity of Sec. 194.192(2), Florida Statutes, which requires imposition of personal liability against a taxpayer who has unsuccessfully attacked ad valorem tax assessments in the manner provided by Florida Statutes 194.171 and 194.181.

II

This Court has jurisdiction of the question of denial of equal protection under the Fourteenth Amendment of the Constitution of the United States, concerning the assessment issues, pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Federal Law.

Article 14 (14th Amendment) of the Constitution of the United States says:

> "SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*" (emphasis supplied)

Article 6 of the Constitution of the United States, in the second paragraph thereof, says:

> . . . "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." . . .

28 U.S.C. § 1341, says:

> "Taxes by States
>
> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

2. State Law.

Applicable Florida constitutional provisions and statutes, being lengthy, are printed in the Appendix to this Jurisdictional Statement. Amendments which have been made to various Florida taxing statutes during the litigation of these consolidated cases and the review process do not affect the questions on appeal. The Appendix hereto contains:

1. Article VII, Section 2, Constitution of the State of Florida. (App. 76a)

2. Article VII, Section 4, Constitution of the State of Florida. (App. 76a)

3. Section 193.011, Florida Statutes (1981). (App. 77a-78a)

4. Section 193.461, Florida Statutes. (App. 78a-81a)

5. Section 193.481, Florida Statutes. (App. 81a-82a)

6. Section 194.032(6)(b) and (c), Florida Statutes. (App. 83a)

7. Section 194.171, Florida Statutes. (App. 83a-84a)

8. Section 194.181, Florida Statutes. (App. 84a-85a)

9. Section 194.192, Florida Statutes. (App. 85a-86a)

10. Section 55.10(1), Florida Statutes. (App. 86a)

11. Section 195.0012, Florida Statutes. (App. 86a)

12. Section 195.002, Florida Statutes. (App. 87a)

13. Section 195.027(1), Florida Statutes. (App. 87a)

14. Section 195.032, Florida Statutes. (App. 87a-88a)

15. Section 195.092(1), Florida Statutes. (App. 88a)

16. Section 195.096, Florida Statutes. (App. 88a-93a)

17. Section 195.097, Florida Statutes. (App. 93a-95a)

STATEMENT OF THE CASE (AND JURISDICTIONAL STATEMENT)

The cases were brought under Sections 194.171 and 194.181, Florida Statutes (App. 83a-85a), whereby a taxpayer is provided a remedy of circuit court action for contesting tax assessments. The judgment involves thirteen actions which were consolidated for trial, all of which were instituted by the taxpayers except four which were filed by the Appraiser. The cases concerned the validity of ad valorem tax assessments of certain separately held mineral or other subsurface rights in land located in Volusia County, Florida, which assessments were made pursuant to Section 193.481, Florida Statutes. (App. 81a-82a)

The opinions below, particularly the Final Judgment and the Fifth District Court of Appeal opinion, adequately delineate the facts and quote most of the applicable Florida Statutes.

In the first nine paragraphs of the Final Judgment the trial court (Circuit Court of Volusia County) found against the taxpayers on all valuation arguments (App. 34a-41a), and in the remainder of the opinion discussed uniformity, discrimination and equal protection arguments (App. 42a-54a). The trial court found [paragraph 11(d)] that the Florida Department of Revenue had taken no serious or effective action to require compliance with Section 193.481, Florida Statutes, and that there was no evidence of plans or intentions to do so [paragraph 11(e)]; that the clear mandatory requirements of Section 193.481, Florida Statutes, had been flagrantly disregarded by the Department and several Florida property appraisers; that the appraisers did not try and fail —that they simply did not try; that they improperly and officiously exercised a discretion they did not possess; *that valuation discretion had no bearing on this particular problem*; that the statute had been conscientiously implemented in Volusia County (paragraph 12); that

the Department had not properly discharged its duties (paragraph 13).

In paragraph 16, the trial court commented on the flagrant violation of law by Florida public officers which was established in the record, held it important for courts of equity to insist that the law be obeyed, declined to become a passive accessory to disregard of the law, and held that the judicial conscience of the court was shocked.

Paragraph 17 observed that Volusia County did not exist in a world of its own and held that the actions of property appraisers in other counties within the St. Johns River Water Management District legitimately concerned the taxpayers. The Final Judgment said:

> "If the plaintiffs' feet are held to the fire in Volusia County while identically-situated owners of subsurface rights in other Florida counties are deliberately and systematically given a free ride by their property appraisers, a court of equity will not cast a glass eye upon plaintiffs' complaint".

The trial court then fashioned an injunctive order against the Department, requiring the Department to take such action as appropriate and necessary to insure uniform implementation and enforcement of Sec. 193.481, Florida Statutes, at the earliest possible time.

Paragraph 15 of the Final Judgment specifically denied taxpayers' contentions that this course of conduct under the supervision of the Department of Revenue of the State of Florida resulted in violation of Fourteenth Amendment equal protection. Accordingly, the trial court denied any relief to the taxpayers with regard to the years of assessments which had been attacked, and in paragraph 2 of the decretal portion of the Judgment adjudged the contested tax amounts "to be due and payable by the respective Plaintiffs to the Volusia County Finance Department". (App. 55a). The court in para-

graph 6 of the decretal portion retained jurisdiction to enforce the Judgment against the Plaintiffs. (App. 56a).

On a motion for rehearing in the trial court, the taxpayers first argued the impropriety of entry of a judgment calling for personal liability as required by Section 194.192(2), Florida Statutes. Rehearing was denied.

The Fifth District Court of Appeal held that Florida's taxing statutes had been applied unconstitutionally to the taxpayers and reversed the trial court, but did not reach the question of constitutionality of Sec. 194.192(2), Florida Statutes. The Fifth District Court also reversed the injunctive order against the Department of Revenue. (App. 30a-32a).

The Fifth District Court, in reversing, examined the history of the particular law authorizing taxation of mineral rights and ultimately held (App. 31a) that:

> ". . . the result of the trial court's findings is that the Department of Revenue's failure to implement Section 193.481, Florida Statutes, by appropriate regulations had resulted in the taxpayers' subsurface rights being assessed in Volusia County when substantially all of similar property was not assessed in the other counties within the multi-county taxing unit known as the St. Johns River Water Management District and that the taxpayers' property so assessed was valued at a level higher than the general level of assessment of substantially all other similar property in other counties in the St. Johns River Water Management taxing district."

The District Court of Appeal, therefore, held that the taxpayers were entitled to relief from illegal assessment and directed the trial court to declare the assessments illegal, null and void.

The Supreme Court of Florida agreed that the Florida Department of Revenue is charged with fulfilling the intention of the legislature that ad valorem taxation laws be enforced, implemented, and administered uniformly

throughout the State; that central to this duty was responsibility of supervising the Florida property appraisers and other taxation officials to ensure they comply with the law; and that the evidence clearly supported the conclusion of both the trial judge and the District Court that the Department had taken no serious or effective action to require all Florida property appraisers to comply with the requirements of Section 193.481, Florida Statutes, to assess subsurface interests. That court then said (App. 3a):

> "Nevertheless, we cannot agree with the District Court's ultimate conclusion that the fact that these taxpayers' subsurface rights were assessed in Volusia County when substantially all similar property was *not* assessed in *other* counties in the Water Management District and that the taxpayers' property so assessed was valued at a level higher than the general level of assessments of substantially all other similar property in *other* counties in the district entitles those taxpayers to relief from their assessments."

The Supreme Court of Florida affirmed the Fifth District Court only insofar as that court had reversed the injunctive order against the Department of Revenue, and otherwise reversed the Fifth District Court and directed affirmance of the approved portion of the final judgment. The Florida Supreme Court held that the trial judge had no authority to enter the injunction against the Department of Revenue and said, "In all other respects the final judgment of the trial judge is approved". (App. 10a)

The taxpayers then moved for rehearing in the Supreme Court of Florida on several grounds (App. 61a-68a). The motion was summarily denied by the order of November 4, 1983 (App. 59a). In the Application for Rehearing to the Florida Supreme Court, the taxpayers principally argued, on the question of personal judg-

ments, that imposition of personal liability was an unconstitutional abridgement of access to the courts of Florida under Art. I, Sec. 21 of the Florida Constitution, but did say in their motion, "It results in a denial of equal protection merely from going to court".

I—Jurisdiction

The pertinent part of Section 194.192(2), Florida Statutes (App. 85a-86a), says:

> "(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, *it shall enter judgment against the taxpayer* for the deficiency and for interest on the deficiency . . .". (emphasis supplied)

Since the Fifth District Court ordered that the assessments be nullified, the taxpayers-respondents could not have asserted invalidity of Section 194.192(2), Florida Statutes, as an additional ground for upholding the Fifth District Court decision. The Florida Supreme Court Judgment itself draws into question the validity of this statute as a part of the statutory package under which the taxpayers were required to seek relief.

It is improbable that this question ever would be raised in a trial contesting assessments, since a taxpayer is placed in the predicament of having to assert unconstitutionality of a portion of the statutes under which he is required to seek relief from the assessments. The question only arises upon loss of the cause by the taxpayer.

A petition for rehearing is a poor and almost universally unsuccessful vehicle for raising questions that were not reviewed. But state procedural bars which preclude or make difficult the adequate assertion of federal questions may in themselves constitute federal questions. See *Douglas v. Alabama*, 380 U.S. 415 (1965); and

Wright v. Georgia, 373 U.S. 284 (1963). In *Wright v. Georgia*, it appears that constitutionality of a statute was raised on a motion for new trial, as it was also in *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931).

Standing alone the assertion of the Motion for Rehearing might not be a sufficient preservation of Fourteenth Amendment arguments directed toward validity of Section 194.192(2), Florida Statutes. The argument should be considered in light of the fact that appellants had argued their right to Fourteenth Amendment equal protection with regard to the main issues and reasserted their right in the Motion. Appellants respectfully submit that although their preservation of federal question number I on the Petition for Rehearing may be minimal, it should be considered sufficient. If the record as a whole shows either expressly or by clear implication that a federal right is presented, it should be sufficient to preserve it. See *New York Ex. Rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928). The record as a whole shows, and even the judgment of the trial court itself shows, that Fourteenth Amendment equal protection was insisted upon vigorously. By clear implication, that is what the appellants referred to on their application for rehearing to the Florida Supreme Court, when they asserted that the particular law of Florida resulted in a denial of equal protection merely from seeking relief in the courts. The judgment is appealable under 28 U.S.C., Section 1257(2).

II—Jurisdiction

As to uniformity in assessment, the taxpayers first asserted reliance upon the Fourteenth Amendment at the trial level. The Fifth District Court of Appeal held the assessments bad but did not explicitly base the holding on the federal right. The Florida Supreme Court ordered reinstatement of the trial court opinion and judgment which had denied there was a Fourteenth Amendment

equal protection violation. The federal question ruling is inherent in the Florida Supreme Court's judgment.

Previously the Supreme Court of Florida, in cases cited in the judgment sought to be reviewed, when dealing with assessments within a single county, had recognized a denial of Fourteenth Amendment equal protection to taxpayers whose property is taxed at full value when all or substantially all of the same class of property is taxed at a lower percentage of value. The Florida Supreme Court simply stops equal protection at the county line, notwithstanding it specifically approved the lower court rulings that the Florida Department of Revenue has utterly failed to perform its duty under Florida law to implement Section 193.481, Florida Statutes, and deliberately and systematically permits other counties within a multi-county taxing district to omit separately held mineral and other subsurface rights from taxation. The Department successfully has resisted an injunction of the trial court that it perform its duties and ultimately has succeeded in obtaining the Florida Supreme Court's approval of the *results* of its actions and inactions, even while that Court confirmed the Department's failures.

This Court has held that the Fourteenth Amendment protects taxpayers from state action which selects them for discriminatory treatment by subjecting them to taxes not imposed on others of the same class. *Hillsborough Township v. Cromwell*, 326 U.S. 620 (1946). Fourteenth Amendment equal protection is denied to taxpayers whose property in a county (taxing unit) is assessed at full value while other property in the same taxing unit is assessed at a significantly lower fraction of the value. *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), and *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931). The constitutional equal protection right is not achieved if a state does not itself remove the discriminatory enforcement of its taxation laws, but leaves the burden to taxpayers to try to require taxing

authorities to comply with the law. Where a few are taxed deliberately and systematically in a discriminatory manner, these principles apply whether there is an omission to tax others or whether others are taxed on significantly lower assessments. The remedy, by virtue of the Fourteenth Amendment and the supremacy clause, is to reduce or eliminate the tax on the few who are singled out. See *Hillsborough Township v. Cromwell* and *Sioux City Bridge Co. v. Dakota County*, supra, and *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239 (1931).

The judgment of the Florida Supreme Court is in direct conflict with the cited cases of this United States Supreme Court on the issue of Fourteenth Amendment equal protection and on the remedy; so this Court's jurisdiction is clear.

THE QUESTIONS ARE SUBSTANTIAL

I

Under 28 U.S.C. § 1341, and under this court's cases of *Fair Assessment In Real Estate v. McNary*, 454 U.S. 100 (1981) and *Rosewell v. Lasalle National Bank*, 450 U.S. 503 (1981), taxpayers are required to assert their federal question attacks upon state taxation in state tribunals if the state affords a "plain, speedy and efficient remedy". Florida affords such remedy in Sections 194.171 and 194.181, Florida Statutes. The Florida law, Section 193.481, requiring ad valorem taxation of separately held mineral and other subsurface rights provides that the taxation will be only against such interests and specifically precludes personal liability, where it says:

> . . . "Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights."

The Florida Statute, Sec. 194.192(2), which requires adjudication of personal liability as a consequence of un-

successful assertion of one's rights in good faith is a burden upon the plain, speedy and efficient remedy which precludes a taxpayer from going to federal court to assert his federal questions. It causes such taxpayers to be discriminated against and not treated equally with other taxpayers who are taxed on identical mineral and other subsurface rights. Those who question assessments in the required way suffer imposition of personal liability if they lose.

Subsection 193.481(5), Florida Statutes, contemplates enforcement of payment of such taxes on mineral rights as in other cases of non-payment, by lien on the specific property and issuance of tax deed. On the other hand, a personal judgment carries with it significant detriment and liability with regard to other property of a taxpayer, since under Sec. 55.10(1), Florida Statutes (App. 86a), such personal judgment becomes a lien upon real estate of such judgment debtor in any county where a certified copy of it is recorded. Thus, if a certified copy of the Final Judgment in this case is recorded, in Volusia as well as in other counties of the State, it would constitute a lien against other properties of appellants and thus be enforceable in a manner totally different and more onerous than the general statutory methods for collection of unpaid ad valorem taxes. Further, personal judgments severely affect credit reputation, while tax liens against specific property and tax deeds are not so injurious.

Paragraph 3 of the decretal portion of the reinstated Final Judgment even adjudicates the amounts to be due "in addition to" sums which might be exacted for redemption of tax certificates (App. 55a). Should potential double exposure be the just desserts of those who have the temerity to question their assessments on federal constitutional grounds?

The classification inherent in Section 194.192(2), Florida Statutes, is arbitrary and unjustified. The attach-

ment of penalties to good faith but unsuccessful assertion of federal (or state) rights is unnecessarily chilling and invidiously discriminatory. Appellants submit that the equal protection question of statutory validity of Section 194.192(2), Florida Statutes, is substantial and deserving of plenary consideration by this court.

II

[Alternatively, Rule 21(j)]

The Fourteenth Amendment right of equal protection is a restriction on the power of the state in administration of its own laws.

The Florida Constitution in Article VII, Sec. 2, provides that "ad valorem taxation shall be at a uniform rate within each taxing unit". Then in Article VII, Sec. 4, the Florida Constitution provides that the legislature may prescribe general laws to "secure a just valuation of all property for ad valorem taxation".

Under these organic provisions, the Florida Legislature has reached for a goal of uniform assessments from county to county and has enacted Chapter 195, Florida Statutes. (See pertinent statutes, App. 86a-95a.) Patently, uniformity in rate within a taxing unit is near meaningless without some effort to achieve uniformity in just valuation. The Department of Revenue of the State of Florida is given the power and duty to oversee the enforcement of the laws of ad valorem taxation in order to achieve the stated legislative intent.

Hand in hand with the legislative goal of uniform assessments has come the legislative creation of multi-county taxing districts. The St. Johns River Water Management District is one of those. (Footnote to Fifth District Court of Appeal opinion, App. 13a.) Volusia County lies in that district, as do numerous other counties referred to in the final judgment; and a portion

of the overall tax which may be collected against assessed property in Volusia County is the millage levy of the multi-county St. Johns River Water Management District. This exacerbates and makes more glaring the assessment omissions and practices condoned in other counties by the Florida Department of Revenue.

The Florida Legislature has defined *separately held* mineral or other subsurface rights as constituting a class of taxable property and mandatorily required the taxation. The Department fails and refuses to perform its duty, with the result that substantially all taxpayers who own that class of property in other counties are not taxed while taxpayers who own that class of property in Volusia County are taxed.

This major aspect of question II does not involve discretion in valuation, as pointed out by the trial court; although equal protection does come into play with regard to valuation. Even where there is isolated taxation of separately held mineral parcels in other counties, there is not a semblance of uniformity in application of valuation criteria. The Fifth District Court of Appeal correctly observed that uniformity of assessment will not occur without regulations for assessment of this peculiar class of property; but the Department has not promulgated such regulations or standards of valuation, although required to do so by Sections 195.027(1) and 195.032, Florida Statutes.

There are several practical reasons, mostly as observed by the Fifth District Court of Appeal, why the Department and various tax appraisers won't enforce the law; but these practical reasons do not excuse deliberate and intentional state action. *The actions of the Department and other appraisers together constitute state action.*

The trial court found the material facts of discrimination but would not declare the contested assessments invalid. Instead the trial court tried to enjoin the De-

partment to carry out its duties. This would have afforded no relief to the taxpayers as to the discriminatory asssessments.

The appellees (respondents) have cited in courts below this Court's case of *Liggett Co. v. Lee*, 288 U.S. 517 (1932), in contending that "two wrongs don't make a right" and that the taxpayers cannot attack their own assessments by showing that others are allowed to escape taxation, and apparently in contending that the remedy is mandamus. But *Liggett Co. v. Lee* did not pertain to ad valorem taxation of real estate. Further, in *Liggett Co. v. Lee*, it appears that a few escaped taxation while most in the particular class were taxed; whereas in the present case there is systematic omission to enforce the law in the taxing district, except in Volusia County. *Liggett Co. v. Lee* helps the appellants in showing that a county line furnishes no reasonable measure of tax, and such line would appear to furnish no reason for failure to impose a tax of statewide application.

Ad valorem tax cases previously cited herein show that it is no remedy at all to taxpayers to try to get taxing authorities to comply with the law in the future. Such purported remedy leaves intact the discriminatory assessements which the taxpayers have questioned in the manner they must under Florida and federal law. The judgment sought to be reviewed not only leaves the discriminatory assessments intact but has concurred in reversal of the trial judge's effort to require the State to do something about it in the future. Citing and extending one of its own cases, the Florida Supreme Court held the taxpayers cannot compel the Department to do its duty under the facts of this case. On this point, the Fifth District Court reversal of the injunction was procedurally based; *but the Florida Supreme Court went out of its way to make the ruling substantive, holding that the taxpayers had no cause of action.* (App. 9a).

The judgment sought to be reviewed says there is no detriment to Volusia County taxpayers who are taxed properly, according to the opinion, pointing out that in other counties surface owners *who do not own* mineral rights under their lands may nevertheless be taxed on them. (App. 10a). That incredible assertion epitomizes the want of equal protection. Absolution from taxation of *separately held* mineral rights should be uniform. Taxpayers are concerned with *who* is taxed, as well as with the amount of tax. [The State of Florida itself owns large acreages of *separately held* mineral rights by reservation in Murphy Act tax deeds, a fact which was observed by the Fifth District Court of Appeal (App. 20a, sixth line from bottom); and credit should be given on the surface assessments.]

The judgment sought to be reviewed affirms the trial court's holding that there is no Fourteenth Amendment equal protection violation. Citing its own cases dealing with *valuation discretion* concerning differences in assessments, the Florida Supreme Court now says that the complete failure to tax separately held subsurface interests in other counties within the District is not such denial of federal right as to entitle the taxpayers to relief. That is a peculiar interpretation of the Fourteenth Amendment. This Court's cases previously cited neither state nor imply such exception for counties within a single taxing unit. Appellants are taxed on their separately held subsurface rights, while identically situated owners of separately held subsurface rights in other counties within the multi-county taxing unit are "given a free ride" by the taxing authorities; ***and if that course of state action does not constitute a denial of equal protection, then the Fourteenth Amendment of the Constitution of the United States holds a hollow promise, gutted by the Florida Supreme Court.*** Indeed, the applicable principles are not limited to the St. Johns River Water Management District, but apply throughout the state,

because the legislature has mandated taxation of a class of property and the goal of uniformity.

The questions involved here are of great significance concerning ad valorem taxation of separately held mineral and other subsurface interests in this State. Florida flaunts the facts in the face of federal rights and stonewalls that there is no violation. The questions are substantial, fundamental; and they clearly merit this Court's attention. Since taxpayers are precluded from instituting United States District Court actions to raise federal questions, a greater burden of review is placed on this Court; otherwise federal rights may be glossed over, buried and lost. The taxpayers meticulously have fought through the mazes of litigation required for assertion of their federal rights; and they have no remedy now save this United States Supreme Court. Respectfully, now is the time this Court should tell Florida that rights under the United States Constitution still apply, even though procedurally they must first be presented in state tribunals.

APPENDIX

The Appendix is separately bound and submitted pursuant to Supreme Court Rule 15(j).

CONCLUSION

Appellants respectfully ask this court to note probable jurisdiction of this appeal and to set this case for full briefing and argument. Should this appeal be deemed improvident, appellants respectfully ask that it be considered as an application for certiorari under 28 U.S.C., Section 2103, and granted and set for briefing and argument.

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ALEXANDER L. STEVAS,
CLERK

No. ——

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FRANK A. FORD, ETC., *et al.*,
Appellants,

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Appellees.

On Appeal from the Supreme Court of the State of Florida
(Alternative Petition for Certiorari)

APPENDIX TO JURISDICTIONAL STATEMENT

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SUPREME COURT OF FLORIDA

No. 62,555

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Petitioners,

v.

FRANK A. FORD, ETC., *et al.*,
Respondents.

[September 8, 1983]

ADKINS, J.

This is a review of a decision of the Fifth District Court of Appeal declaring section 193.481, Florida Statutes (1981), to be unconstitutional as applied, which is reported at 417 So.2d 1109 (Fla. 5th DCA 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

Section 193.481 requires the separate ad valorem assessment and taxation of separately-owned subsurface rights in Florida. The respondents in this case are owners of separate subsurface rights in several thousand acres of land in Volusia County, Florida. Volusia County is within the limits of the multi-county St. Johns River Water Management Taxing District. The respondents' interests were separately assessed by the Volusia County property appraiser for the years 1975 through 1979. The respondents filed this action against the Department of Revenue and the Property Appraiser of Volusia County, John Turner, asserting a multitude of objections to the assessments and contending that the statute, section 193.481, is unconstitutional on its face and as applied to them. The trial court rejected respondents'

arguments and concluded that the disputed assessments and taxes on respondents' subsurface rights were lawful and correct. However, the court declared that its judicial conscience was shocked by the "flagrant and continuous disregard of the clear terms of a mandatory statute" as evidenced by the failure of property appraisers in *other* counties to assess similar property. Accordingly, the trial court directed that a copy of the judgment be furnished to the governor and also ordered the Department of Revenue to take appropriate action to ensure compliance with section 193.481. The Department of Revenue filed an appeal and the taxpayers filed a cross-appeal.

On appeal, the district court concluded that the statute is not necessarily unconstitutional on its face and is capable of being applied constitutionally, provided it is properly implemented as necessary to achieve uniformity and equality in the assessment and just valuation of subsurface mineral rights. However, the court reversed the judgment and remanded the cause to the trial court to act on its findings and to declare the statute unconstitutionally applied as to the assessments of the taxpayers' subsurface rights in Volusia County. The trial court was also ordered to declare the assessments null and void, to require an appropriate refund of all taxes paid by the taxpayers under the illegal assessments, and to enjoin the collection of taxes levied upon the assessments.

The district court opinion explored in detail the legislative provisions which outline the responsibilities of the Department of Revenue in regards to ad valorem taxation. We agree with the court's conclusion that the Florida Department of Revenue is clearly charged with implementing the legislature's intention that Florida's ad valorem taxation laws are enforced, implemented and administered uniformly throughout the state. § 195.027(1), Fla. Stat. (1981). Central to this duty is the Department's responsibility of supervising Florida property ap-

praisers and other local taxation officials and ensuring that they comply with the laws which govern the assessment, collection and administration of ad valorem taxes. The evidence clearly supports the conclusion of both the trial judge and the district court that the Department had taken no serious or effective action to require all Florida property appraisers to comply with the requirement of section 193.481 to assess subsurface interests in or to real property. Nevertheless, we cannot agree with the district court's ultimate conclusion that the fact that these taxpayers' subsurface rights were assessed in Volusia County when substantially all similar property was *not* assessed in *other* counties in the water management district and that the taxpayers' property so assessed was valued at a level higher than the general level of assessments of substantially all other similar property in *other* counties in the district entitles those taxpayers to relief from their assessments.

This Court has rejected these arguments on previous occasions. In 1977 in *Spooner v. Askew*, 345 So.2d 1055 (Fla. 1977), the Court rejected the argument that a properly assessed taxpayer can obtain relief by showing inequality of assessments in *other counties*. We stated: "This Court has never declared as invalid an entire tax roll which assesses property at 100% of full fair market value . . . and it has never required a reevaluation of assessed real property values in one county based on comparative inequalities with assessed values in another county. *Id.* at 1057-58. We expressly recognized that statewide uniformity is "more a goal than a compellable right." *Id.* at 1059. Again in 1978 in *Straughn v. GAC Properties, Inc.*, 360 So.2d 385 (Fla. 1978), the Court declined to hold, merely on the basis of an allegation that different values had been assigned to adjacent properties of like character in different counties, that a taxpayer could claim a violation of the "just valuation" requirement or that the Department could be compelled to equalize the values. Our tax system should strive to move toward

uniformity, but a lack of statewide uniformity generally does not give a taxpayer a cause of action to reduce or cancel a valid tax assessment. We have recognized an exception to this general rule when all or substantially all of the property in a county is systematically assessed at a percentage of value less than a property's owner's property within that *same* county. *Deltona Corporation v. Bailey*, 336 So.2d 1163, 1168 (Fla. 1976). But, the taxpayer/property owner must show that he has been singled out and specifically discriminated against vis-a-vis other taxpayers generally in the county. *Southern Bell Telephone & Telegraph Co. v. County of Dade*, 275 So.2d 4 (Fla. 1973); *Dade County v. Salter*, 194 So.2d 587 (Fla. 1966). The respondents have not alleged or shown such general, systematic underassessment of property within Volusia County. In no sense have they claimed that their property interests have been singled out for unfavorable treatment as against all other property in the county.

The taxpayers also challenged the validity of the assessment of their severed subsurface mineral rights on the ground that section 193.481, Florida Statutes (1981), is facially void for vagueness because it directs that the use of statutes and regulations relating to the assessment of other real property shall apply to the separate assessment of such subsurface rights only "insofar as they may be applied." The statute reads:

> (1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other interest in the fee, shall be subject to separate taxa-

tion. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights.

(2) The property appraiser shall, upon request of the owner of real property who also owns mineral, oil, gas, or other subsurface mineral rights to the same property, separately assess the subsurface mineral right and the remainder of the real estate as separate items on the tax roll.

(3) Such subsurface rights shall be assessed on the basis of a just valuation, as required by s. 4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

The taxpayers assert that the delegation of discretion to the county appraiser to determine which factors in the statute will be applied when assessing subsurface rights results in an unlawful delegation of legislative authority for failing to provide sufficient standards for assessment.

The district court, recognizing the unique difficulty involved in the valuation of subsurface mineral rights, concluded that the discretion given appraisers by section 193.481 did not make it facially vague and render it unconstitutional. But, the court also concluded that "there is absolutely no hope for uniformity" in valuation of subsurface rights in property "without detailed guidelines of statewide application." 417 So.2d at 1116.

Section 193.011 sets forth eight factors and directs property appraisers to take them into consideration in arriving at just valuation. That section reads:

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required

under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under

the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

The trial judge's final judgment addressed this issue. We agree with his analysis. He stated:

> In [appellees'] insistence that the valuation discretion of local property appraisers must be narrowly restricted and supplanted by rules, regulations and guidelines promulgated by the Legislature or the Department of Revenue, [appellees] fail to recognize that Florida property appraisers are constitutional officers who are of necessity provided with great discretion. Indeed, the preservation of the local property appraisers' valuation discretion is of fundamental importance so long as the Florida Constitution mandates that ad valorem taxation in Florida shall be based upon just value, which is synonymous with fair market value. *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965). Determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers. As stated in *District School Board of Lee County v. Askew*, 278 So.2d 272 (Fla. 1973):
>
> > We have held that the Legislature has the power to regulate the method of assessments, but not to interfere with the assessor's discretion. . . . There is great difficulty in precisely fixing property values so that the assessor is provided great leeway in his assessment, so long as he follows in good faith the requirements of the law." (Citations omitted).
>
> The determination of the just value of real property must be made, in the final analysis, by an exercise of

> sound appraisal judgment, based upon a proper application of recognized appraisal principles and the valuation guidelines prescribed in the just value law, Section 193.011, Florida Statutes. [Appellees'] insistence that more valuation regulations are needed to achieve the proper assessment of separately-owned subsurface rights in Florida is not supported by the evidence, and, indeed, this contention is contrary to the evidence adduced at the trial. There is no question that the assessment of separately-owned subsurface rights is a difficult task. Both the identification of these interests, and their valuation, impose difficult burdens upon Florida property appraisers. But this is only one of many difficult tasks which are imposed by law on Florida property appraisers, who are charged with the duty, among other things, of identifying and determining the just value of all of the real property and tangible personal property within their respective counties each year.

The taxpayers also contend that the appraiser failed to properly follow the statutory valuation criteria specified in section 193.011. We find this argument to be without merit. The trial court expressly stated that the evidence presented refuted this contention of the taxpayers and found that the appraiser had properly and conscientiously considered all applicable valuation criteria specified in the statute. The final judgment of the trial court, in pertinent part reads:

> Mr. DeBartolo's testimony leaves no question in the Court's mind that the Volusia County Property Appraiser and his staff have made a conscientious and competent effort to determine the just values of the subject parcels as of the first day of each tax year in accordance with recognized appraisal principles and the valuation criteria specified in Section 193.011, Florida Statutes. The subject assessments were made on the basis of careful study of the subject proper-

> ties as well as diligent investigation and careful consideration of available market data. The subject assessments and the massive amount of data collected by the property appraiser's staff have been painstakingly reviewed and analyzed by statistical techniques and other methods. Although [appellees] have made a mighty effort to find some fault in the assessments made by the Volusia County Property Appraiser, or in the manner in which he made them, [appellees] failed to do so. Credit should be given where credit is due. The [appellees'] painstaking, critical scrutiny of the subject assessments in these actions has revealed that the Volusia County Property Appraiser and his staff conscientiously complied with the law as stated in Section 193.481 and did so in a highly competent, professional manner.

Accordingly, we disagree with the decision of the Fifth District Court of Appeal. We find that section 193.481 has not been unconstitutionally applied and that the assessments on the respondents' subsurface property rights are lawful and valid.

However, we expressly decline to approve the trial court's injunction against the Department of Revenue. This Court answered the question of whether a cause of action lies against the Department to compel equalization of ad valorem tax valuations where real property situated in one county is assessed on the basis of a higher value than that assigned to allegedly identical property located in another county in *Straughan v. GAC Properties*. We declined to hold that the Department could be so compelled merely on the basis of an allegation that different values had been assigned to adjacent properties of like character in different counties. The factual distinctions in this case do not warrant a contrary result and, thus, this Court's holding in *Straughan* is dispositive on the issue of the validity of the trial's court's injunction.

We point out that the property owners suffer no financial detriment whatsoever by virtue of any lack of such separate assessments elsewhere. The lack of such separate assessments merely means that the entire just value is assessed againt the surface owner.

The decision of the district court of appeal is quashed in part and approved in part. We agree with the trial judge that the mandatory provision of section 193.481, Florida Statutes (1981), must be implemented. However, this must be done without retention of jurisdiction by the trial court. That portion of the district court of appeal decision which reversed the part of the trial court's order directing the Department of Revenue to do certain acts is approved. The trial judge had no authority to enter that part of the final judgment. In all other respects the final judgment of the trial judge is approved.

This cause is remanded to the District Court of Appeal with instruction to affirm that portion of the final judgment which we have approved.

It is so ordered.

ALDERMAN, C.J., BOYD, OVERTON, McDONALD, EHRLICH and SHAW, JJ., Concur

Application for Review of the Decision of the District Court of Appeal—Constitutional Construction

Fifth District—Case No. 81-147

Jim Smith, Attorney General and Joseph C. Mellichamp, III, Assistant Attorney General, Tallahassee, Florida; and William M. Barr of Raymond, Wilson, Conway, Barr, Burrows and Jester, Daytona Beach, Florida,

for Petitioners

Harlan Tuck of Giles, Hedrick and Robinson, Orlando, Florida; and Edwin P. B. Sanders of Landis, Graham, French, Husfeld, Sherman and Ford, DeLand, Florida,

for Respondents

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

JULY TERM, 1982

Case No. 81-147

FLORIDA DEPARTMENT OF REVENUE,
Appellant,

v.

FRANK A. FORD, ETC., *et al.*,
Appellees/Cross-Appellants,

and

JOHN W. TURNER, as Property Appraiser of Volusia County Florida, ETC., *et al.*,
Appellees.

Opinion filed August 11, 1982

Appeal from the Circuit Court for Volusia County, James T. Nelson, Judge

Jim Smith, Attorney General; and Joseph C. Mellichamp, III, Assistant Attorney General, Tallahasse, for Appellant.

Harlan Tuck of Giles, Hedrick & Robinson, Orlando, for Appellees/Cross-Appellants.

Edwin P.B. Sanders of Landis, Graham, French, Husfeld, Sherman & Ford, P.A., DeLand, for Appellees/Cross-Appellants Rudman Resources, Inc. and R. J. Fuller.

William M. Barr of Raymond, Wilson, Conway, Barr, Burrows and Jester, Daytona Beach, for Appellees.

COWART, J.

This case involves the constitutionality of section 193.481, Florida Statutes (1982), which imposes ad valorem taxes on several subsurface mineral rights, and problems relating to the uniform assessment and valuation of such rights within a multi-county taxing district.

Appellees/cross-appellants all own severed subsurface mineral rights to land in Volusia County.[1] These rights were valued and assessed separately from the surface rights for ad valorem taxation purposes. This appeal is from a consolidation of thirteen actions in which appellees/cross-appellants disputed the proper assessment of ad valorem taxes against those rights and the valuation of the rights.

The Volusia County property appraiser separately valued and assessed the severed subsurface mineral rights under the authority of section 193.481, Florida Statutes (1979). The relevant portions of section 193.481, Florida Statutes (1979) (formerly section 193.221, Florida Statutes (1961)) are as follows:

> (1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other

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[1] Appellees'/Cross-appellants' property is also within the St. Johns River Water Management District taxing district. §§ 73.069(2)(c), Fla.Stat. (1982). The district includes all of Nassau, Duval, St. Johns, Clay, Flagler, Volusia, Seminole, Brevard, and Indian River Counties and part of Baker, Alachua, Putnam, Marion, Orange, Lake, Polk, Osceola and Okeechobee Counties.

interest in the fee, shall be subject to separate taxation. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or against separate interests or rights in or to such subsurface rights.

(2) The property appraiser shall, upon request of the owner of real property who also owns mineral, oil, gas, or other subsurface mineral rights to the same property, separately assess the subsurface mineral right and the remainder of the real estate as separate items on the tax roll.

(3) Such subsurface rights shall be assessed on the basis of a just valuation, as required by s. 4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

(4) Statutes and regulations, not in conflict with the provisions herein, relating to the assessment and collection of ad valorem taxes on real property, shall apply to the separate assessment and taxation of such subsurface rights, insofar as they may be applied.

Prior to 1957 in Florida subsurface mineral rights separately owned from the surface land were not separately assessed for ad valorem tax purposes. Chapter 57-50, Laws of Florida (Section 193.221, Florida Statutes (1961), provided in substance (as does present section 193.481) that such severed subsurface mineral rights "shall be taken and treated as real property and shall be subject to taxation separate from the fee." However, under the original act the duty of the tax assessor to separately assess severed subsurface mineral rights was clearly conditional. The owner of those rights had a duty to return them for taxation; however, if the owner failed

to do so, the tax assessor could separately assess the rights only when a written request to do so had been filed by the owner of some record interest in the property. When that statute was assailed, the Florida Supreme Court, in *Cassady v. Consolidated Naval Stores Company*, 119 So. 2d 35 (Fla. 1960), struck it down as unconstitutional, holding that "the effect of the Statute is to authorize the tax assessor to do what this court has said that he cannot do—that is, systematically and intentionally omit from the tax rolls property of the same classification as plaintiff's." The court held that the statute did not relate merely to the procedure or remedy for the collection of taxes but delegated assessment (the ascertainment and listing of the property to be taxed and its ownership), a sovereign legislative power that cannot be delegated, to the discretion or whim of the subsurface owner or the surface owner of the particular tract of land. Because of that conclusion, the court expressly did not consider the issue that the statute lacked constitutional requirements of uniformity and equality, but did direct attention to *Federal Land Bank of Houston v. Texas*, 314 S.W.2d 621 (Tex. Civ. App. 1958).

In 1963 the legislature amended section 193.221, Florida Statutes, by deleting the provision that the owner of the subsurface rights should return them for taxation, but repeated the provision that such rights, when separated from the fee, should be subject to separate taxation only "when returned for taxation by the owner of the fee—or the owner or claimant of such subsurface rights—." When the validity of the amended statute again came before the Florida Supreme Court, in *Dickinson v. Davis*, 224 So.2d 262 (Fla. 1969), in a four to three decision the majority upheld the amended statute. The dissent agreed with the conclusion of the trial court that the statute still did not mandate the tax assessor to assess and place on the tax rolls all mineral rights, or even all severed mineral rights, but required the assessor to do so only when both such rights had been severed and "when

returned for taxation" and that the statute still vested in the specified parties the right to control if and when the severed subsurface rights in a particular tract of land was to be assessed for ad valorem taxes and still, as in *Cassady*, unconstitutionally delegated the taxing authority. The majority in *Dickinson* held that the initial sentence in the statute, providing that severed subsurface mineral rights were to be taken and treated as real property subject to taxation separate from the surface fee, was an independent and unqualified statement of the law and that it brought into play the provisions of section 193.021, Florida Statutes, relating to the method of assessment and section 193.11, Florida Statutes, requiring the county tax assessor to ascertain by diligent inquiry the names of all taxable persons and all taxable real estate. The majority also relied heavily on section 193.12, Florida Statutes, requiring every person owning or controlling property that was subject to taxation to return the property under oath to the county tax assessors. Thus, the supreme court held, in effect, that the tax assessor's statutory duty to assess (§ 193.11, Fla. Stat. (1967)) and the statutory duty of both the surface and subsurface owners to return the mineral rights for taxation (§ 193.12, Fla. Stat. 1967)) overcame the infirmity in the statute that would have resulted from requiring a separate assessment of the mineral rights only when the subsurface or surface owners acted to cause such separate assessment, which *Cassady* had held constituted an unconstitutional delegation of the legislative authority to tax.

Chapter 69-60, section 1, Laws of Florida, deleted from section 193.221, Florida Statutes (1963), the language that made return of the rights by the surface or subsurface owners or those claiming through them a condition precedent to the assessor's duty to separately assess severed subsurface mineral rights.[2]

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[2] Chapter 69-60, section 1, Laws of Florida, deleted the words "when returned for taxation by the owner of the fee, or other

These amendments and interpretations trace the history of the original chapter 57-50, Acts of 1957, to the present form of the statute as it is involved in this litigation.

First, the appellee/cross-appellant taxpayers challenge the validity of the assessment of their severed subsurface mineral rights on the ground that section 193.481, Florida Statutes (1981), is facially void for vagueness. Subsection (4) directs that the use of statutes and regulations relating to the assessment of other real property shall apply to the separate assessment of such subsurface rights only *"insofar as they may be applied."* The taxpayers argue that this delegation to the county property appraiser of arbitrary discretion to determine which provisions (factors) of the statute (§ 193.011, Fla. Stat., providing factors that must be considered in obtaining constitutional just valuation) to apply in the assessment of subsurface rights fails to provide sufficient standards for their assessment and results in an unconstitutional delegation of legislative authority.

Section 193.011, Florida Statutes (1982), sets forth eight factors and directs property appraisers to take them into consideration in arriving at just valuation as required under article VII, section 4 of the state constitution. All of the factors listed do not always apply in all valuations of all property for tax purposes. The phrase "insofar as they may be applied" contained in section 4 of section 193.481, Florida Statutes, is merely a recognition of that fact and of the unique difficulty involved in the valuation of subsurface mineral rights, the ownership of which has been severed from the ownership of the surface and other rights in the land but which have not been physically severed, or extracted or withdrawn from

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interest in the fee, or the owner of claimant of such subsurface rights or interest, or any person, firm or corporation claiming by, through or under the subsurface owner or claimant" following the words "shall be subject to separate taxation."

the soil or water, so that their quantity and quality can be more readily known and valued, as in the levying of an excise tax on the severance of minerals under sections 211.31 and 211.3106, Florida Statutes (1982). The usual exercise of discretion by the property appraiser in the application of the different factors set forth in section 193.011, Florida Statutes (1982), as they may reasonably apply differently to different classes and types of property to be valued and the recognition that mineral rights in place are different from other property does not create *facial* vagueness rendering this statute unconstitutional on that ground. The practical problems inherent in the valuation of such rights will be discussed below.

Appellant taxpayers assert that, as *Cassady* recognizes, a taxing statute that permits within one taxing unit some property to be taxed while permitting other property of the same classification to be systematically and intentionally omitted from taxation or taxed only at the discretion of the tax assessor (property appraiser) or any other individual or group is unconstitutional as unlawfully delegating the sovereign power to tax and as denying the equal protection of law. Appellant taxpayers further point out that *Dickinson* upheld the successor statute only by holding that it did not result in unconstitutional delegation and inequality because both the tax assessor and the property surface and subsurface owners had statutory duties to cause the assessment of all such severed mineral rights. Finally, appellant taxpayers argue that the saving provisions relied on in *Dickinson* do not apply in this case because (1) the duty of owners of real property to file returns was eliminated by chapter 70-243, Laws of Florida, now section 193.052(2), Florida Statutes (1982), and (2) section 193.11(1), Florida Statutes (1967), requiring the tax assessor to "ascertain by diligent inquiry the names of all taxable persons in his county—and all taxable real estate therein—" was also eliminated by chapter 70-243, Laws of Florida. However, section 193.11 (1) was replaced by present sections 193.085 and 193.114,

Florida Statutes (1981), which provide that "the property appraiser shall insure that all real property within his county is listed and valued on the real property assessment roll." Chapter 70-243, Laws of Florida, also placed duties on the Department of Revenue to promulgate regulations and to provide maps and forms necessary to insure that all real estate within the state is listed and justly valued on the real property assessment rolls of all the counties of the state. Even so, the taxpayers contend, as a matter of fact, that the Department of Revenue has not promulgated such regulations and the property appraisers of the respective counties comprising the taxing district of the St. Johns Water Management District have regularly and generally, systematically and intentionally, failed and neglected to take the actions necessary to "insure" that all severed subsurface mineral rights are assessed and are justly valued as mandated by article 7, section 4 of the Constitution of the State of Florida.

After a careful consideration of the statute, its history and purpose and the objections and arguments of the appellant taxpayers, we agree with the conclusion of the trial judge below that section 193.481, Florida Statutes, as presently written is not necessarily unconstitutional on its face and is capable of being applied constitutionally, *provided it is properly implemented* as necessary to achieve uniformity and equality in the assessment and just valuation of subsurface mineral rights. However, if diligent and substantial effort is not expended by the Department of Revenue to promulgate regulations and to take other actions to insure uniformity among the various counties in such assessment and valuation it will not result.

Basically two implementation problems are involved: (1) uniformity and equality in assessment and (2) just valuation.

The uniformity problem in placing all severed subsurface mineral rights on the tax rolls was basically the problem in *Cassady* and *Dickinson* and arose in part from

the wording of the statute. However, this assessment problem, as well as the valuation problem, also arises in part from an inherent difference between surface ownership of land and ownership of mineral rights beneath the surface of the land. If both water and land are considered "surface," then all land has surface. All land surface can be located and visually observed and different parcels of land compared and, as a practical matter, surface rights are owned, traded and sold frequently enough to reflect market preferences and to establish comparable market prices.

On the other hand, all land does not have minerals beneath the surface and their existence or not under a particular parcel of land cannot be easily determined. Even when minerals are known to exist beneath a certain parcel their quantity, quality and value cannot be easily determined. Peculiar factors other than the value of the mineral rights are often involved in setting the consideration for a conveyance of the severed mineral rights. Further, the statute relates only to mineral rights, the ownership of which has been severed from the ownership of surface rights. Although the ownership of some mineral rights is severed by separate instruments or documents executed for that purpose only, most such rights are severed by being reserved by an owner-grantor in a deed conveying the surface rights away. These reservations are sprinkled at random in deeds in the chains of title to real property and do not stand out in a title search, as do separate conveyances of interests in land which appear to remain in the grantees in such conveyances unless those grantees, their heirs, devisees or assigns have also conveyed them on. Such mineral reservations are common in Murphy Act tax deeds, which in Florida have conveyed millions of acres. To locate all severed mineral rights for the purpose of putting them on the assessment roll requires a careful title search of the entire chain of title to all land. Such an identification of these

severed mineral rights is a great burden and if properly done requires great labor and expense. However, it was a legislative prerogative to require that these real property interests bear their fair share of the ad valorem tax burden and to require a separate assessment and valuation of such property rights so as to fairly apportion the tax on the whole between the surface and subsurface owners.

The evidence before the trial court indicates that, while the taxing officers were aware of the statute and its mandatory requirements, some counties separately assess mineral rights when the surface owner insists, most counties simply do not tax such interests and at least one county separately assessed no severed mineral rights and had actually refused four requests to do so. The trial court concluded that no county had made a serious systematic effort to identify and separately assess all such mineral rights in the county and that, in the eight counties specifically examined in this litigation, no property appraiser had diligently taken action necessary to "insure that all" severed mineral rights "within his county is listed and valued on the real property assessment roll" as required by section 193.085 and 193.114, Florida Statutes (1982). This is a very significant factual finding in view of the fact that the supreme court in *Dickinson v. Davis* relied on property appraisers performing this duty to assess in upholding the facial constitutionality of this statute and the fact that the statute requiring owners to return property for taxation of real property has now been repealed. The evidence specifically identified recorded documents relating to severed subsurface rights under 320,000 acres in Brevard, Orange and Osceola Counties and under 21,000 acres located in Putnam, Flagler, Lake, St. Johns, Seminole, Clay and Lafayette counties which were not assessed.

The position of the property appraisers in the eight counties specifically examined was that the identification

of separately owned subsurface rights was a task for which they lacked sufficient manpower and resources, that the cost of hiring an outside abstractor to identify such rights would be prohibitive, that property appraisers generally have other more important and urgent problems and duties than the separate assessment of subsurface rights and that the separate assessment of subsurface rights was not a matter of great public importance because it did not increase the total value of taxable property in the county.[3]

While, as stated above, we agree with the trial court that merely because section 193.481(4), Florida Statutes (1982), recognizes that all of the factors set forth in section 193.011, Florida Statutes (1982), cannot always be applied in valuing mineral rights and directing the application of such factors "insofar as they may be applied" does not show in and of itself that the statute cannot be constitutionally applied, nevertheless, the nature of mineral rights causes many valuation problems peculiar and different from the problems involved in the valuation of surface land area. Some of these valuation problems relate to the same matters that also cause assessment difficulties. Consider a few examples. Some land has beneath the surface mineral deposits sufficiently well known in amounts and types that such deposits can be valued and traded by persons knowledgeable about such matters; this is not always true and is relatively rare in Florida. How does one value mineral "rights" beneath a parcel of land when it is not known whether or not there are any minerals under that parcel? Does the qualified "right" to explore for and to extract minerals from beneath a parcel of land exist and have an assessable just value when there are no marketable minerals beneath

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[3] This view results from the requirement of section 193.481(3) that a reduction of the valuation of the surface land rights must be made equal to the valuation of severed mineral rights under such parcel.

the particular parcel? How are such bare rights valued when it is known that there are no marketable minerals under such parcel? When minerals are known to be under a particular parcel but there is no feasible way to determine their quantity or quality, how can they be valued? When minerals are under a city lot, the surface of which is covered by buildings and as an actual practical matter the minerals cannot be extracted from the ground, how can they be valued? These are just some of the problems.[4] Perhaps the main valuation problem is that the monetary consideration for the conveyance of severed subsurface mineral rights is quite frequently based, not on any valuation of the market value of the minerals themselves, or even a market value of the right to explore for them, but reflects a payment for the removal of the obstruction that such severed rights constitute against the marketability of the surface rights themselves. This was recognized in *Dickinson v. Davis*, where it was said

> It should be recognized that such property rights in this State are generally conveyed either for possible mining purposes, or to eliminate clouds[5] upon real

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[4] The legislature has recognized the difficulty in valuing these severed subsurface mineral rights. Section 211.13, Florida Statutes (1981), in chapter 211, which imposes an excise tax on oil and gas as it is removed from the ground, states "The several property appraisers of this state and tax assessors of the cities therein, when assessing the value of any land for ad valorem taxes, shall not increase the value thereof by reason of the fact that there may be oil or gas under the surface of such land, *inasmuch as it is impossible under known valuation methods to accurately ascertain the true value of oil and gas in place* and taxation thereof is more certainly accomplished after its capture or severance from the earth or water." (emphasis added)

[5] Clouds on land titles are apparent outstanding claims which in fact or law are not genuine and real and these may be removed by a quiet title action. Unfortunately normal severed subsurface mineral rights are not mere "clouds"—they are genuine outstanding legal property rights and interests and cannot be cleared

> property titles caused by the separate ownership of same from the ownership of the other interests in the land and improvements thereon.

The truth of this statement absolutely requires a recognition of the fact that sums paid for unknown subsurface rights can and do involve two factors, viz: (1) a market estimation of the value of the possibility of the existence of subsurface deposits and of their extraction value and (2) the unique desire, and oftentimes need, of the surface owner to reunite the severed subsurface rights with his title in order to acquire a full fee simple absolute title to all interests in the parcel. Many prospective purchasers and lenders require that there be no outstanding subsurface mineral rights. The amount a surface owner or others must pay for the potential value of this second factor—its nuisance or blackmail value—depends entirely on the desires and necessities, and the compulsion and compassion, if any, of the buyer and seller and not on any intrinsic "just" or "actual" or "market" value of the subsurface mineral rights themselves. Consideration paid by a buyer because of this latter factor constitutes no part of a proper valuation of the subsurface minerals for ad valorem tax purposes. Because of this unique situation, the consideration for conveyances of severed subsurface rights is not a reliable guide to either the extraction value of minerals or even of the value of the potential or possibility of an extraction value. Conveyances from owners of severed subsurface rights to surface owners are very suspect and should be strongly presumed not to be sales between a willing purchaser and a willing seller as contemplated by section 193.011(1), Florida Statutes (1982), and general law requiring comparable sales, to be evidence of value, to be those between a willing purchaser and a willing seller, neither under any compulsion

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by a quiet title action. They can only be acquired by private persons by purchase or gift. They are not purchased for the purpose of making gifts of them to the surface owner.

to deal with the other. The factors in section 193.011, Florida Statutes, that can be applied to the valuation of subsurface rights, such as when minerals are known and subject to a specific valuation, must be applied and applied uniformly and equally, but factors not in section 193.011, Florida Statutes, cannot be lawfully applied. This includes factors relating to the nuisance of outstanding subsurface rights and of their rejoinder value to the marketability of the fee. There is also authority for the statement that a just valuation of such severed mineral rights cannot be obtained by either a flat rate per surface area or by using a percent of the value of the surface rights. Thus it can be seen that the individual county property appraiser has a most difficult, if not impossible, problem properly valuing subsurface mineral rights and why there is absolutely no hope for uniformity in such matters from county to county without detailed guidelines of statewide application. If such statewide guidelines cannot be conceived and drafted, then it must follow that such interests are incapable of being uniformly assessed and valued and, hence, cannot be lawfully taxed.

In 1973, the Florida legislature greatly expanded the responsibilities of the Department of Revenue to see to it that Florida tax rolls were prepared in compliance with law and granted the department the authority and means to secure such compliance. Chapter 73-172, Laws of Florida. In section 195.0012, Florida Statutes, the legislature declared that it intended

> to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in each other county or taxing district.

Section 195.002 provides in part:

> Tse Department of Revenue shall have general supervision of the assessment and valuation of prop-

> erty so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. . . .

Section 195.027(1) directs the Department to prescribe reasonable rules and regulations for the assessment and collection of taxes and declares:

> It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and *the administration shall be uniform, just and otherwise in compliance with the requirements of the general law and the constitution.* (Emphasis added.)

Section 195.096 subjects the assessment rolls of each county to review by the Division of Ad Valorem Tax. Section 195.097(1) provides in part:

> Upon evaluation of the findings of the Division of Ad Valorem Tax, and upon the independent study of his staff, the executive director of the department shall evaluate the assessment rolls of all counties and *shall issue a notice to any property appraiser who he has determined has one or more classes or other strata of property listed on the assessment rolls in a manner inconsistent with the requirements of law, or is otherwise not assessing in accordance with the law.* The executive director shall specify in this notice the classes or strata of property that have been improperly assessed on the prior year's roll, the nature of the defect or defects, and the requirements of the department to obtain approval of the current year's assessment roll. Such notice shall be provided to the property appraiser no later than January 15. (Emphasis added.)

Subsections (2) and (3) provide for the Department's issuance of administrative orders and its continuing su-

pervision of tax rolls to ensure that effective remedial steps are taken. Subsection (3) provides:

> During its supervision, the department may seek any judicial remedy available to it under law to force compliance with its order, and may request removal of the property appraiser by the Governor when it deems such action necessary.

Section 193.114 provides for review of all Florida assessment rolls by the Department of Revenue. Subsection (6) provides:

> The executive director shall disapprove all or part of any assessment roll of any county not in full compliance with the administrative order of the executive director issued pursuant to the notice called for in s. 195.097, and shall otherwise disapprove all or any part of any roll not assessed in substantial compliance with law, as disclosed during the department's investigation, including, but not limited to, audits by the Department of Revenue and Auditor General establishing noncompliance.

The Department of Revenue is also authorized by section 195.092 to bring actions "to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state. . . ." Section 195.087 also charges the Department of Revenue with the authority and responsibility to review and approve or amend the budgets of Florida property appraisers.

The "Property Assessment Administration and Finance Law" enacted in 1973 as chapter 195, Florida Statutes, makes it clear that the Florida Legislature intended, through and by means of the Florida Department of Revenue, to insure that local taxing officers comply with the law so that Florida's ad valorem taxation law is enforced, implemented and administered uniformly throughout the state. At the same time the legislature

evidenced a proper regard for the broad *valuation* discretion vested in local property appraisers by the Florida Constitution. The Florida Department of Revenue is clearly charged with the responsibility of seeing that Florida property appraisers and other local taxation officials comply with the laws which govern the assessment, collection and administration of ad valorem taxes in Florida. The evidence in this case fully supports, and we approve, the conclusion of the trial judge that the Florida Department of Revenue has taken no serious or effective action to require Florida property appraisers to comply with the mandatory requirements of section 193.481, Florida Statutes, and that the clear mandatory requirements of that statute have been flagrantly disregarded by most of the property appraisers in the eight counties within the St. Johns River Water Management taxing district that were specifically examined in this litigation and by the Florida Department of Revenue. We further approve the finding of the trial court that, with possibly two exceptions, those property appraisers have simply not taken the statute seriously and have for the most part disregarded its requirements. Referring to those property appraisers, the trial court stated: "They did not try and fail. They simply did not try." The trial court found, and we agree, that compliance with section 193.481 is a clear mandatory duty of Florida property appraisers, which duty those public officials have no authority or discretion whatsoever to disregard and that the broad discretion of property appraisers to *value* property for ad valorem tax purposes has no bearing on this problem. In view of *Cassady* and *Dickinson* and the present statutes, the only way that the assessment of severed subsurface mineral rights under section 193.481, Florida Statutes (1982), can be uniformly, lawfully and constitutionally assessed and valued is for the Department of Revenue to use its authority to cause the property appraiser to be able to, and to, use diligent effort to insure that all such mineral rights are assessed on the ad valorem tax rolls. This has not yet occurred.

When faced with the conclusion that section 193.481 had not been implemented by the property appraisers of various counties of the St. Johns River Water Management Taxing District so as to achieve constitutional equality in assessment and justice in valuation, the trial court was faced with an alternative in giving the taxpayers a remedy. Rather than cancelling the tax assessments, the trial judge's mind turned toward requiring the governmental taxing authorities to perform their duties so as to achieve, if possible, constitutional uniformity in assessment and valuation under the statute. Accordingly, the trial judge (1) expressly stated that the judicial conscience of the court was shocked at the failure of the taxing officials to apply section 193.481 so as to achieve constitutional uniformity in assessment in the multicounty taxing district, St. Johns River Water Management District, (2) noted that this problem did not involve differences of opinion as to valuation, (3) recognized that the court did not have jurisdiction over the taxing officials from the counties other than Volusia County, which other taxing officials testified at the trial but were not parties to this action, but (4) observed that the Florida Department of Revenue was a party over which the court had jurisdiction. The trial court further correctly observed that Volusia County did not exist in a world of its own for purposes of ad valorem taxation of real property because part of the taxpayers' taxes was directly attributable to the millage that is levied by the St. Johns River Water Management District, of which Volusia County is but one county and, therefore, the actions of all property appraisers in all other counties of that multicounty taxing district were of legitimate concern to appellant taxpayers of Volusia County; thus, a court of equity should not "cast a glass eye upon plaintiff's complaint" about the fact that their feet were being "held to the fire in Volusia County while identically situated owners of subsurface rights in other Florida counties [within the same multi-county taxing unit] are de-

liberately and systematically given a free ride by their property appraisers." The trial judge found a "glaring, indisputable inequality among ad valorem tax rolls of different counties in the St. Johns River Water Management District" and concluded that the only way for section 193.481 to be applied so as to achieve constitutional uniformity in assessment and in valuation in a multi-county taxing unit was for the Department of Revenue to perform its duties in that particular by prescribing mandatory rules, regulations and administrative orders directed toward achieving such constitutional uniformity. Accordingly, the trial court denied the taxpayers relief from their assessments and proceeded to order the executive director of the Department of Revenue "forthwith to take such action as may be appropriate and necessary to ensure that the provisions of section 193.481, Florida Statutes, are faithfully implemented and enforced at the earliest possible time and, in any event, in sufficient time to insure that Florida tax rolls for the 1981 tax year comply with the mandatory provisions of said statute." The trial court further ordered the executive director to submit to the court written reports of actions taken to comply wtih the statute and the court order.

The executive director of the Department of Revenue of the State of Florida appeals, as do the taxpayers.

The experienced trial judge did a splendid job in this very complex case and all of his evidentiary and ultimate findings of fact are amply supported by the record in the case and are hereby approved, with one small exception. On Page 19 of the twenty-four page final judgment it is stated:

> Plaintiffs have invoked the jurisdiction of this Court to compel the Florida Department of Revenue to perform its duties under the laws of the State of Florida.

This is incorrect. As stated in Paragraph 4 of the taxpayers' complaint, the executive director of the Depart-

ment of Revenue of the State of Florida was joined as a party defendant only in compliance with the mandatory requirements of section 194.181(5), Florida Statutes (1982). The taxpayers' prayer for relief sought only a declaratory judgment that their assessments and valuations were illegal or that the pertinent statute was unconstitutional and an injunction against the collection of their taxes. The statement of issues set forth in the pretrial order related only to the constitutionality of section 193.481, Florida Statutes, either facially or as applied, and as to whether the contested assessments were defective and void because of improper assessment or valuation.

While under the pleadings in this case the trial court did not have the authority to require the Department of Revenue to perform its statutory duties, nevertheless, the result of the trial court's findings is that the Department of Revenue's failure to implement section 193.481, Florida Statutes, by appropriate regulations had resulted in the taxpayers' subsurface rights being assessed in Volusia County when substantially all of similar property was not assessed in the other counties within the multi-county taxing unit known as the St. Johns River Water Management District and that the taxpayers' property so assessed was valued at a level higher than the general level of assessment of substantially all other similar property in other counties in the St. Johns River Water Management taxing district. Accordingly, the taxpayers were entitled to relief from the illegal assessment of their property in the past and not merely a court supervised and directed effort by the Department of Revenue to achieve constitutional uniformity in the future. Therefore, the final judgment is reversed and the cause remanded with instructions to the trial court to act on its findings and to declare that section 193.481, Florida Statutes (1982), has been unconstitutionally applied as to the assessment of the appellees'/cross-appellants' taxpayers' severed sub-

surface mineral rights in Volusia County, to declare said assessments illegal, null and void, to require an appropriate refund of all taxes paid by appellees/cross-appellants taxpayers under such illegal assessments and to enjoin the collection of taxes levied upon such illegal assessments.

REVERSED AND REMANDED with directions.

UPCHURCH, F., and SHARP, W., JJ., concur.

IN THE CIRCUIT COURT, IN AND FOR
VOLUSIA COUNTY, FLORIDA
DIVISION E

Case Nos:

75-4404-01	(1975 Taxes)
76-4299-01	(1976 Taxes)
76-4367-01	(1976 Taxes)
76-4368-01	(1976 Taxes)
77-3620-CA-01	(1977 Taxes)
77-3621-CA-01	(1977 Taxes)
77-4288-CA-01	(1977 Taxes)
77-4289-CA-01	(1977 Taxes)
78-4369-CA-01	(1978 Taxes)
78-4370-CA-01	(1978 Taxes)
79-4704-CA-01	(1979 Taxes)
79-4680-CA-01	(1979 Taxes)
79-4749-CA-01	(1979 Taxes)

(Consolidated by Stipulation and Order
of January 25, 1980)

FRANK A. FORD, ETC., *et al.*,
Plaintiffs,

VS.

JOHN W. TURNER, JR., as Property Appraiser
of Volusia County, ETC., *et al.*,
Defendants.

FINAL JUDGMENT

All of these 13 civil actions are disputes concerning the ad valorem assessment and taxation of separately-owned subsurface rights in Volusia County, Florida. Pursuant to the written stipulation and agreement of all parties, approved by this Court's order of January 25,

1980, the actions were consolidated for purposes of discovery and trial. The actions were thereafter tried before the Court sitting without a jury during the week of September 15, 1980. The Court has carefully considered the testimony and other evidence adduced at the trial, as well as the written and oral arguments of counsel. Being fully advised in the premises, the Court

DECLARES, DETERMINES AND FINDS as follows:

1. The taxpayers who are parties in these actions are FRANK A. FORD, individually and as trustee; BERNICE A. FORD; EMMA G. FORD; EUGENE M. SPEER and MYRTLE E. SPEER, his wife; HAROLD T. CHITTUM, JR., and BETTY J. CHITTUM, his wife; HAROLD T. CHITTUM, JR., Trustee; and BARBARA ANN BRAME; R. J. FULLER; and RUDMAN RESOURCES, INC. Sometimes these taxpayer parties will be referred to collectively here as the "taxpayers" or the "plaintiffs." The taxing officers and agencies who are parties are JOHN W. TURNER, JR., as Property Appraiser of Volusia County, Florida, etc.; DAVID EDWARDS, as Tax Collector of Volusia County, Florida, etc.; COUNTY OF VOLUSIA, a political subdivision of the State of Florida; and RANDY MILLER, as Executive Director of the Department of Revenue of the State of Florida. In some actions, members of past Boards of Tax Adjustment or Property Appraisal Adjustment Boards have been joined as parties. Sometimes all of the foregoing taxing-officer and -agency parties will be referred to collectively here as the "defendants." All of these actions were filed by the plaintiff taxpayers with the exception of Civil Action Nos. 77-3620-CA-01, 77-3621-CA-01, 77-4288-CA-01 and 77-4289-CA-01, which were filed by the Property Appraiser pursuant to Section 194.032, Florida Statutes, to contest the adverse ruling of the 1977 Property Appraisal Adjustment Board. In all of the other tax years at issue (1975, 1976, 1978 and 1979), the Board of Tax Adjustment or Property Appraisal Ad-

justment Board denied the taxpayers' objections to the subject assessments.

2. The tax parcels involved in these actions are separately-owned oil, gas, mineral and other subsurface rights that were separately-assessed by the Volusia County Property Appraiser in accordance with Section 193.481, Florida Statutes, which provides in mandatory language that

> "Such [separately-owned] subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas and other subsurface rights shall be subject to separate taxation."

3. The Court has carefully considered the numerous objections that plaintiffs have directed at Section 193.481, Florida Statutes, and at the subject ad valorem tax assessments which were made pursuant to its command. Plaintiffs' contention that the statute is unconstitutional on its face is without merit. The facial constitutional infirmities of earlier legislative enactments dealing with this subject, which are discussed in *Cassady* v. *Consolidated Naval Stores Company*, 119 So.2d 35 (Fla. 1960) and *Dickinson* v. *Davis*, 224 So.2d 262 (Fla. 1969), are not to be found in the present statute. In its present form, the statute expresses a mandatory legislative command to Florida Property appraisers to make separate tax assessments of separately-owned subsurface rights. Such assessments are to be made on the basis of just value. As Subsection (3) provides:

> "Such subsurface rights shall be assessed on the basis of a just valuation as required by s.4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights."

The identification of such separate real property interests as separate tax parcels on Florida tax rolls, and their separate assessment apart from the remaining fee or surface interests, constitutes a valid Legislative prescription which violates no requirement or limitation of either the Florida Constitution or the Constitution of the United States. Indeed, the manifest purpose of the statute is to contribute to the achievement of the foundational objective of an "equitable distribution of the tax burden" in Florida as described in *Williams* v. *Jones*, 326 So.2d 425 (Fla. 1976). The object of the statute is to achieve justice and equity between the surface owner and the owner of separated subsurface rights. As stated in *Straughn* v. *Sun Oil Co.*, 345 So.2d 1062 (Fla. 1977):

> "It is only just that the tax burden generated by subsurface mineral rights fall on those who benefit from possession of those rights, and it is clear that the Legislature was motivated by such a concern."

And in *Dickinson* v. *Davis*, *supra* at 265, the Supreme Court of Florida declared:

> "The purpose of this law was to place upon those persons who own only the sub-surface rights in real property the obligation to pay a portion of the real property taxes proportionate to their interest in the whole."

Thus, reduced to its essential terms, the statute merely requires separated subsurface rights to bear their fair and equitable share of the tax burden. There is nothing unconstitutional about that.

4. In charging that the statute is "void for vagueness," that it fails to provide sufficient standards or guidelines, and that it constitutes an unlawful delegation of legislative authority to Florida property appraisers, the plaintiffs are attempting to create problems where none exist. The statute simply tells Florida prop-

erty appraisers to identify these separate real property interests as separate tax parcels, and to assess them separately at their just value, with a cautionary direction that the total assessments of the subsurface interests and the other interests in the lands involved shall not exceed the full just value of such lands. Subsection (4) provides that statutes and regulations relating to the assessment and collection of ad valorem taxes on real property shall apply to the separate assessment and taxation of subsurface rights insofar as they apply and are not in conflict with the provisions of Section 193.481. The statutory provisions give clear and adequate direction to Florida property appraisers.

5. Plaintiffs' contentions that the statute is unconstitutionally vague and incomplete and their insistence that it must be "so complete that nothing is left to the judgment of the person to whom the power is delegated" betray fundamental misconceptions about the constitutional and legal structure of ad valorem tax administration in Florida. In their insistence that the valuation discretion of local property appraisers must be narrowly restricted and supplanted by rules, regulations and guidelines promulgated by the Legislature or the Department of Revenue, plaintiffs fail to recognize that Florida property appraisers are constitutional officers who are of necessity provided with great discretion. Indeed, the preservation of the local property appraiser's valuation discretion is of fundamental importance so long as the Florida Constitution mandates that ad valorem taxation in Florida shall be based upon just value, which is synonymous with fair market value. *Walter* v. *Schuler*, 176 So.2d 81 (Fla. 1965). Determination of just value inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers. As stated in *District School Board of Lee County* v. *Askew*, 278 So.2d 272 (Fla. 1973):

> "We have held that the Legislature has the power to regulate the method of assessment, but not to inter-

> fere with the assessor's discretion. . . . There is great difficulty in precisely fixing property values so that the assessor is provided great leeway in his assessments, so long as he follows in good faith the requirements of the law." (Citations omitted)

The determination of the just value of real property must be made, in the final analysis, by an exercise of sound appraisal judgment, based upon a proper application of recognized appraisal principles and the valuation guidelines prescribed in the just value law, Section 193.011, Florida Statutes. Plaintiffs' insistence that more valuation regulations are needed to achieve the proper assessment of separately-owned subsurface rights in Florida is not supported by the evidence and, indeed, this contention is contrary to the evidence adduced at the trial. There is no question that the assessment of separately-owned subsurface rights is a difficult task. Both the identification of these interests, and their valuation, impose difficult burdens upon Florida property appraisers. But this is only one of the many difficult tasks which are imposed by law on Florida property appraisers, who are charged with the duty, among other things, of identifying and determining the just value of all of the real property and tangible personal property within their respective counties each year.

6. Plaintiffs also contend that the subject assessments are "defective and void" on account of numerous alleged errors of the defendant property appraiser. However, the Court finds that plaintiffs' many objections to these assessments are, severally, without merit. The subject assessments are neither "defective" nor "void," as plaintiffs contend: they are valid, proper and lawful ad valorem tax assessments which comply with all applicable laws and all applicable constitutional requirements and limitations. Plaintiffs contend that the property appraiser failed to "follow properly" the statutory valuation criteria specified in the just value law, Section 193.011, Florida

Statutes. The credible evidence clearly refutes that contention and the Court finds that the property appraiser did in fact properly and conscientiously consider, follow and apply all applicable valuation criteria specified in Section 193.011, Florida Statutes. Plaintiffs' contention that the property appraiser improperly considered "speculative" factors in making the subject assessments is likewise contrary to the credible evidence and without merit.

7. Mr. Frank DeBartolo, Chief Property Evaluator of the Volusia County Department of Assessments, testified about the subject assessments, both as an adverse witness called by plaintiffs and as a witness called on behalf of the defendants. Mr. John Corry, Sr., an independent fee appraiser with offices in DeBary, Florida, was called as a witness for the plaintiffs. Both of these witnesses are qualified real estate appraisal experts. However, their testimony and expert opinions concerning the values of the subject subsurface rights are in direct conflict. The Court finds that the more logical, convincing and credible valuation testimony was presented by Mr. DeBartolo. The conflicts in the evidence and the difference of opinion between the valuation experts must be, and they are, resolved in favor of the defendants and Mr. DeBartolo. The Court finds that Mr. DeBartolo's testimony and his opinions and estimates concerning the values of the subject subsurface rights are more logical, credible and convincing than the contrary testimony, opinions and value estimates offered by the plaintiffs and Mr. Corry. Mr. DeBartolo's testimony leaves no question in the Court's mind that the Volusia County Property Appraiser and his staff have made a conscientious and competent effort to determine the just values of the subject parcels as of the first day of each tax year in accordance with recognized appraisal principles and the valuation criteria specified in Section 193.011, Florida Statutes. The subject assessments were made on the basis of careful study of the subject properties as well as diligent investigation and care-

ful consideration of available market data. The subject assessments and the massive amount of data collected by the property appraiser's staff have been painstakingly reviewed and analyzed by statistical techniques and other methods. Although plaintiffs have made a mighty effort to find some fault in the assessments made by the Volusia County Property Appraiser, or in the manner in which he made them, plaintiffs failed to do so. Credit should be given where credit is due. The plaintiffs' painstaking, critical scrutiny of the subject assessments in these actions has revealed that the Volusia County Property Appraiser and his staff conscientiously complied with the law as stated in Section 193.481, and did so in a highly competent, professional manner. The plaintiffs' real complaint against the Volusia County Property Appraiser is that he has *complied* with the law in accordance with his solemn oath of office. Plaintiffs' complaint, in other words, is that the Volusia County Property Appraiser has done his work too well.

8. In contrast, the plaintiffs' appraisal evidence is defective and unsatisfactory. Mr. Corry failed to do his homework. He was unaware of the dates as of which the subject properties were to be appraised. He was also ignorant of many characteristics and features of the subject properties, such as their size, location, the number of parcels involved, and so forth. He received much of his information from the plaintiffs or their attorneys and testified more in the capacity of an advocate than as an independent, objective expert. Although the evidence strongly supports Mr. DeBartolo's conclusion that the values of subsurface interests are related to the values of the parcels of which they are a part, Mr. Corry's appraisal did not satisfactorily take that fact of the marketplace into account. Instead of determining the value of each of the subject parcels on the basis of its own features and characteristics, he valued the properties in *generalized*, broad-brush terms, and assigned the same unit value of $5.00 per acre to all parcels alike. He pro-

ceeded in this fashion despite the fact that the subject property comprises several hundred parcels of subsurface rights scattered throughout the County. In contrast to Mr. DeBartolo, Mr. Corry did *not* proceed in accordance with proper-appraisal practices and he did *not* properly consider the valuation criteria of Section 193.011. He did not properly consider such factors as the location, quantity and size of the subject property. Mr. Corry's opinion that *all* of the several hundred tax parcels have the same $5.00-per-acre value, regardless of the size, location and other characteristics of each parcel, is essentially unreasonable and arbitrary. The conclusion of the special master and the 1977 Property Appraisal Adjustment Board that all such parcels should be valued at $11.25 per acre, is likewise arbitrary. (See Plaintiffs' Exhibit 1) Similarly, it would be arbitrary and improper to assign an across-the-board percentage of fee value to subsurface rights. See *Dickinson* v. *Davis*, 224 So.2d 262, 267 (Fla. 1969). Arbitrary valuation formulae of that kind, applied to all parcels alike without proper consideration of the characteristics of each parcel and the parcel-by-parcel exercise of sound appraisal judgment based upon market data, do not provide a proper method of valuing separately-owned subsurface rights or any other kind of real property. Such formulae are not valid substitutes for the professional appraisal process and the valuation criteria specified in Section 193.011, Florida Statutes.

9. Plaintiffs object that the assessments are improper because the property appraiser considered transactions between surface and subsurface owners. Plaintiffs contend that such sales are involuntary, forced sales tainted by compulsion which disqualifies them as indicators of market value. However, the Court does not accept plaintiffs' view that such sales must be arbitrarily rejected, and cannot be considered, because of a *presumed* element of compulsion. Compulsion may exist in some such transactions, but not in others. The property appraiser should not *assume* that such transactions are either voluntary or

involuntary. He should make that determination in his investigation and evaluation of each transaction. That was properly done by the defendant property appraiser here.

10. The Court has also considered plaintiffs' contentions that the statute or the subject assessments, or both, are invalid because the subject subsurface rights are assessed at their just value, instead of at lower agricultural values, despite the undisputed fact that some of the lands of which these subsurface rights are a part, have been classified and assessed as agricultural land. Plaintiffs argue, in particular, that they are victims of "discrimination" in those instances in which they own 50% of the subsurface rights and the surface owner, who owns the surface and other interests in the land, including the other 50% of the subsurface rights, enjoys agricultural classification. In claiming that their "identical" subsurface rights are therefore treated discriminatorily, plaintiffs ignore the fact that their subsurface rights are not "identical" to those which enjoy agricultural classification. The plaintiffs' subsurface rights are different because they are separately-owned and because they are not *used* primarily for any bona fide agricultural purpose within the meaning of the Greenbelt Law, Section 193.461, Florida Statutes. To qualify for preferential agricultural assessment, one must prove agricultural *use*. As the Supreme Court of Florida said in *Straughn* v. *Tuck*, 354 So.2d 368, 370 (Fla. 1978), "Agricultural use is now and has always been the test." No amount of conceptualistic and semantic frog-hair splitting disguises the plain fact that these separately-owned subsurface interests were not used for any agricultural purposes during any of the tax years at issue. In addition, the Court finds that none of the plaintiffs applied for agricultural classification of any of these parcels in any of the tax years at issue. Plaintiffs are not victims of discrimination because their non-agricultural subsurface rights are assessed at just value and other parcels which are used for agri-

cultural purposes are assessed on the basis of that agricultural use. The validity of preferential Greenbelt assessments has been recognized for many years. *Lanier* v. *Overstreet*, 175 So.2d 521 (Fla. 1965). Nor are plaintiffs' separately-owned subsurface interests entitled to agricultural classification by virtue of the surface owner's agricultural activities and uses. No sound basis exists in the Greenbelt Law or in Section 193.481 to support a "derivative" agricultural classification of one tax parcel by virtue of the agricultural use of a separate tax parcel. Such an interpretation of these laws would be contrary to the rule that statutes granting special tax preferences and exemptions are to be strictly construed. Such an interpretation would also be contrary to the plain language of Section 193.481 providing that separately-owned subsurface rights are to be taken and treated as an interest in real property "*separate and apart from the fee. . . .*" and that they shall be assessed "on the basis of a *just valuation.*" There is the additional consideration, of course, that the agricultural classification of separately-owned subsurface rights would be a patent absurdity.

11. Plaintiffs also contend that they have been denied equal protection of the law because of a lack of inter-county uniformity of assessment practices and procedures, particularly within the St. Johns River Water Management District, a multi-county taxing district which includes Volusia County. Plaintiffs thus contend that Section 193.481, Florida Statutes, is unconstitutional as it is applied. In support of these contentions, plaintiffs called as witnesses either property appraisers or their chief deputies from several counties within the St. Johns River Water Management District. These taxing officers, from Orange, Seminole, Marion, Lake, Brevard, Flagler and Putnam Counties testified as to the manner in which Section 193.481 is implemented and enforced in their respective counties. Additional evidence concerning assessments of subsurface rights in other counties was given by the

plaintiff, Frank Ford; Kate Walton, an attorney in Palatka, Florida; and Mr. Noel Clark of Ft. Myers, Florida, an experienced petroleum agent who has dealt in subsurface rights and leases in Florida for many years. In summary, the evidence demonstrates:

a. That substantial holdings of separately-owned subsurface rights in Florida counties other than Volusia have not been separately assessed and taxed as required by Section 193.481, Florida Statutes. Mr. Clark testified that he knows of separately-owned subsurface rights in several Florida counties which have not been separately assessed and taxed. Mr. Clark cited, as an example, an oil lease covering approximately 320,000 acres of land in Brevard, Orange and Osceola Counties. Mr. Ford is a principal of Volaco, Inc., a Florida corporation which purchased approximately 21,000 acres of subsurface rights from Wilson Cypress Company in 1979. These holdings, located in nine Florida counties, were conveyed to Volaco, Inc. by special warranty deed dated November 15, 1979 and recorded in the following counties:

Putnam County, Official Records Book 383, Page 302

Flagler County, Official Records Book 136, Page 0602

Lake County, Official Records Book 692, Page 175

St. Johns County, Official Records Book 443, Page 771

Seminole County, Official Records Book 1267, Page 0912

Clay County, Official Records Book 556, Page 70

Lafayette County, Official Records Book 46, Page 256

The deed has also been recorded in Orange and Marion Counties. It specifically identifies and conveys separately-owned subsurface rights in each of the above nine Florida counties. Ms. Walton confirmed that these subsurface rights had not been separately assessed before they were conveyed by Wilson Cypress Company to Volaco, Inc.,

and Mr. Ford confirmed that they have not been separately assessed after the conveyance.

b. The testimony of the property appraisers or deputy property appraisers from Orange, Seminole, Marion, Lake, Brevard, Flagler and Putnam Counties confirmed that little or no effort has been made to identify and separately assess the separately-owned subsurface rights in those counties. Although these taxing officers are aware of the statute and its mandatory requirements, those requirements have not been complied with in those counties. In some counties no apparent effort at all has been made to comply with the statute. In some counties a few separate assessments of subsurface rights have been made, but no serious or systematic effort has been made to identify all of such rights in the county.

c. Mr. John Seay, Property Appraiser of Flagler County, testified that he had tried to have the statute amended to require owners of separately-owned subsurface rights to identify those rights on returns filed with the property appraiser. He believed that his attempt to have the Legislature amend the statute in this fashion had been defeated by the petroleum industry. Mr. Seay also testified that he had investigated the cost of hiring an outside abstracter to examine Flagler County land titles to identify separately-owned subsurface rights and had found that the cost was prohibitive. Some property appraisers explained that the identification of separately-owned subsurface rights is a task for which they lack sufficient manpower; that they believe that they have other problems and duties which are more important and/or urgent than the separate assessment of subsurface rights; and that the separate assessment of subsurface rights is not a matter of great importance because it does not tend to increase the total value of taxable property in the county.

d. No representative of the Florida Department of Revenue testified. The Court concludes, from the evi-

dence that was presented and the evidence that was not presented, that the Florida Department of Revenue has taken no serious or effective action to require Florida property appraisers to comply with the mandatory requirements of Section 193.481, Florida Statutes.

e. There is no convincing evidence in the record that either the Florida property appraisers and deputies who testified at the trial, or the Florida Department of Revenue, has any present plans or intentions to take any serious action to implement Section 193.481, Florida Statutes.

12. The evidence presented in these actions leaves no serious question in the Court's mind that with the exception of Volusia County, the clear, mandatory requirements of Section 193.481, Florida Statutes, have been flagrantly disregarded by several Florida property appraisers and by the Florida Department of Revenue. The Court is not favorably impressed by the dubious excuses and justifications which some property appraisers offered for their nonfeasance of duty. There is no question that the implementation of the statute is a large, difficult task and that Florida property appraisers may well encounter manpower and other problems in complying with its requirements. However, the evidence clearly demonstrates that the property appraisers and deputies who testified did not fail in any serious attempt to comply with the statute because of manpower shortages or other problems. With the possible exception of Mr. Seay, they have simply not taken the statute seriously and have for the most part decided to disregard its requirements. They did not try and fail. They simply did not try. In exercising a discretion to disregard plain, mandatory requirements of the statutory law of the State of Florida, which are directly applicable to the performance of their official duties, Florida property appraisers improperly and officiously exercise a discretion that they do not possess. Compliance with Section 193.481 is a clear, mandatory duty of Florida property appraisers which those public officers have

no authority or discretion whatsoever to disregard. The broad discretion of property appraisers to *value* property for ad valorem tax purposes has no bearing on this problem. Valuation discretion is one thing; deliberate disregard of the plain requirements of the law is something else. As the Supreme Court of Florida observed in *District School Board of Lee County* v. *Askew*, 278 So.2d 272 (Fla. 1973):

> "[T]he assessor is provided great leeway in his assessments, *so long as he follows in good faith the requirements of the law.*" (Emphasis added.)

The fact that the statute has been properly and conscientiously implemented in Volusia County casts great doubt upon the dubious excuses of other property appraisers for their failure to comply with the statute.

13. The evidence in this record demonstrates that the Florida Department of Revenue has not properly discharged its duties with respect to the enforcement of Section 193.481, Florida Statutes. In 1973, the Florida Legislature greatly expanded the responsibilities of the Department of Revenue to see to it that Florida tax rolls are prepared in compliance with the law, and granted the Department the authority and means to secure such compliance. Ch. 73-172, Laws of Florida. In Section 195.0012, Florida Statutes, the Legislature declared that it intended

> "to recognize and fulfull the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district."

Section 195.002 provides in part:

> "The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax

rolls and shall be valued according to its just valuation, as required by the constitution. . . ."

Section 195.027(1) directs the Department to prescribe reasonable rules and regulations for the assessing and collecting of taxes, and declares:

> "It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and *the administration shall be uniform, just and otherwise in compliance with the requirements of the general law and the constitution.*" (Emphasis added.)

Section 195.096 subjects the assessment rolls of each county to review by the Division of Ad Valorem Tax. Section 195.097(1) provides in part:

> "Upon evaluation of the findings of the Division of Ad Valorem Tax, and upon the independent study of his staff, the executive director of the department shall evaluate the assessment rolls of all counties and *shall issue a notice to any property appraiser who he has determined has one or more classes or other strata of property listed on the assessment rolls in a manner inconsistent with the requirements of law, or is otherwise not assessing in accordance with the law.* The executive director shall specify in his notice the classes or strata of property that have been improperly assessed on the prior year's roll, the nature of the defect or defects, and the requirements of the department to obtain approval of the current year's assessment roll. Such notice shall be provided to the property appraiser no later than January 15." (Emphasis added.)

Subsections (2) and (3) provide for the Department's issuance of administrative orders and its continuing supervision of tax rolls to ensure that effective remedial steps are taken. Subsection (3) provides:

> "During its supervision, the department may seek any judicial remedy available to it under law to force compliance with its order, and may request removal of the property appraiser by the Governor when it deems such action necessary."

Section 193.114 provides for review of all Florida assessment rolls by the Department of Revenue. Subsection (6) provides:

> "The executive director shall disapprove all or part of any assessment roll of any county not in full compliance with the administrative order of the executive director issued pursuant to the notice called for in s. 195.097, and shall otherwise disapprove all or any part of any part of any roll not assessed in substantial compliance with law, as disclosed during the department's investigation, including, but not limited to, audits by the Department of Revenue and Auditor General establishing non-compliance."

The Department of Revenue is also authorized by Section 195.092 to bring actions "to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state. . . ." Section 195.087 also charges the Department of Revenue with the authority and responsibility to review and approve or amend the budgets of Florida property appraisers.

14. Any thoughtful study of the "Property Assessment Administration and Finance Law" enacted in 1973 as Chapter 195, Florida Statutes, as a part of Chapter 73-172, makes it clear that the Florida Legislature clearly intended, through and by means of the Florida Department of Revenue, to ensure that local taxing officers comply with the law so that Florida's law of ad valorem taxation is enforced, implemented and administered uniformly throughout the State. At the same time, the Legislature has evidenced a proper regard for the broad *valua-*

tion discretion vested in local property appraisers by the Florida Constitution. In sum, the Florida Department of Revenue is clearly charged with the responsibility of seeing to it that Florida property appraisers and other local taxation officials comply with the laws which govern the assessment, collection and administration of ad valorem taxes in Florida. And in charging the Department of Revenue with that important duty, the Legislature provided the Department with ample statutory authority and means to discharge its task. When one studies these laws, largely enacted in 1973, in conjunction with the clear evidence in this record of flagrant, widespread disregard of the mandatory provisions of Section 193.481, Florida Statutes, it is difficult to conceive of any good reason why the Department of Revenue has remained indifferent to the provisions of this statute for so many years.

15. Plaintiffs contend that because property appraisers in other counties have not implemented Section 193.481, Florida Statutes, and because the Florida Department of Revenue has not taken effective action to achieve inter-county uniformity in the application of the statute, their rights under the Florida Constitution and the 14th Amendment of the United States Constitution have been violated, and the subject assessments in Volusia County, which *were* made in accordance with the law, are "defective and void." The Court does not accept plaintiffs' reasoning and conclusions. The evidence clearly demonstrates that the subject assessments of plaintiffs' subsurface rights in Volusia County were properly and lawfully made by the Volusia County Property Appraiser in compliance with all requirements of the law, and that these assessments do not exceed the just value of plaintiffs' subsurface rights. It would be improper for this Court to cancel or reduce lawful tax assessments, or to order the Volusia County Property Appraiser to perform the illegal act of changing legal assessments to illegal assessments. *Cosen Investment Co.* v. *Overstreet*, 154 Fla. 146,

17 So.2d 788 (1944); *Deltona Corporation* v. *Bailey*, 336 So.2d 1163 (Fla. 1976); *Sproul* v. *Royal Palm Yacht & Country Club, Inc.*, 143 So.2d 900 (Fla. 2nd DCA 1962); *Spooner* v. *Askew*, 345 So.2d 1055 (Fla. 1977); *Straughn* v. *GAC Properties, Inc.*, 360 So.2d 385 (Fla. 1978). When some public officers perform their lawful duties and others do not, forward motion along the road of progress and enlightenment is not achieved by striking down the work product of those officers who are obeying the law. Progress is achieved by correcting errors, not by repeating them.

16. The fact that plaintiffs are not entitled to relief in the form of reductions or cancellations of their own tax assessments, does not mean that this Court should shrug its judicial shoulders in effete indifference to the flagrant violation of the law by Florida public officers which is established in this record. At a time in the history of the American Republic in which the achievement of effective accountability by public agencies and officers at all levels of our Government has become a matter of imperative public necessity, Florida courts of equity should stand firm in the performance of their historic responsibilities. Indeed, the more fashionable it may become in some official quarters to disregard the clear command of the law, the more important it is for courts of equity to insist in plain language that the law be obeyed. This Court declines to become a passive accessory of those Florida property appraisers who appear to believe that they possess a discretion either to obey the law of the State of Florida, or, instead, to disregard it, as they see fit. The judicial conscience of this Court is shocked, as was that of the Court in *Department of Revenue* v. *Bell*, 227 So.2d 684 (Fla. 1st DCA 1969). The problem here is not the same as the problems dealt with in the Bell case, *supra* or in *Spooner* v. *Askew*, 345 So.2d 1055 (Fla. 1977) or *Straughn* v. *GAC Properties, Inc.*, 360 So.2d 385 (Fla. 1978). Those cases all involved disputes and differences of opinion about the *valuation* of real prop-

erty in different counties. They did not involve the kind of flagrant and continuous disregard of the clear terms of a mandatory statute which the evidence reveals here. Although this Court recognizes that the taxing officers from other counties who testified at the trial are not parties to these actions and that the Court lacks jurisdiction over them, the Florida Department of Revenue by and through its executive director, is a party over which this Court does have jurisdiction.

17. Plaintiffs correctly observe that Volusia County does not exist in a world of its own for purposes of the ad valorem taxation of real property. Volusia County is within the St. Johns River Water Management District, as described in Section 373.069(2)(c), Florida Statutes, and it is thus a part of that taxing district for purposes of ad valorem taxation. Part of the taxes which plaintiffs are required to pay annually is directly attributable to the millage which is levied by the St. Johns River Water Management District upon all real property within the district. Accordingly, the actions of property appraisers in other counties within the district is of legitimate concern to Volusia County taxpayers such as the plaintiffs. If the plaintiffs' feet are held to the fire in Volusia County while identically-situated owners of subsurface rights in other Florida counties are deliberately and systematically given a free ride by their property appraisers, a court of equity will not cast a glass eye upon plaintiffs' complaint. Plaintiffs have invoked the jurisdiction of this Court to compel the Florida Department of Revenue to perform its duties under the laws of the State of Florida. The Department of Revenue should not ignore the kind of glaring, indisputable inequality among ad valorem tax rolls of different counties in the St. Johns River Water Management District that is revealed in this record; and, if it does, it is the duty of the Court to require the Department of Revenue to perform its clear legal duties.

18. As stated above in this judgment, the 1973 Florida Legislature issued a clear mandate to the Department of Revenue to see to it that Florida tax rolls are prepared in accordance with the law. The Legislature armed the Department with ample authority with which to achieve that task. The Department is authorized to prescribe mandatory rules and regulations so that the administration and collection of ad valorem taxes shall be uniform and in compliance with the law throughout the State. Section 195.027(1), Florida Statutes. Florida tax rolls and the manner in which Florida property appraisers perform, or fail to perform, their official duties, are subject to the supervisory audit and review of the Department. The Department is authorized under Section 197.097, Florida Statutes, to issue administrative orders to property appraisers who are not obeying the law and it is empowered to closely monitor the actions taken by property appraisers to comply with such orders. Section 195.097(3) provides as follows:

> "Upon the issuance of the administrative order, the department shall commence continuing supervision of the preparation of the current rolls to insure that every reasonable effort is being taken by the property appraiser to comply with the order. Supervision may include, but shall not be limited to, the conduct of ratio or other mass data studies on the roll being prepared. During its supervision, the department may seek any judicial remedy available to it under law to force compliance with its order, and may request removal of the property appraiser by the Governor when it deems such action necessary. No later than May 1, the executive director shall notify the property appraiser, in writing, as to whether he is in substantial compliance with the order. In the event that the executive director determines that the property appraiser is not in substantial compliance at that time, he shall send to the property appraiser and the governing body of each tax-levying agency

in the county a notice of intent to disapprove the tax roll in whole or in part."

19. The tax parcels involved in these actions and the amounts of the assessments and taxes applicable to each parcel for the tax years in dispute, are set forth on the computer printouts admitted into evidence as Plaintiffs' Exhibits 6 and 7 (Ford and Speer) and Plaintiffs' Exhibit 1 (Rudman and Fuller). A summary of the assessed valuations, taxes, the amounts admitted to be due and paid, and the amounts of taxes remaining unpaid, was admitted into evidence as Defendants' Exhibit 2. Plaintiffs' Exhibit 19 also indicates that the plaintiffs, Frank A. Ford, etc., et al., paid a partial payment of 1977 taxes in the amount of $600.00, and plaintiffs, Eugene M. Speer, et al., paid a partial payment of 1977 taxes in the amount of $4.39, for which said plaintiffs are entitled to credit. The Court finds that said assessments, as originally made by the Volusia County Property Appraiser, and without the reductions of 1977 assessments ordered by the 1977 Property Appraisal Adjustment Board, are correct and lawful in all respects. The reductions of the property appraiser's original 1977 assessments ordered by the 1977 Property Appraisal Adjustment Board are improper and contrary to law. The foregoing exhibits correctly set forth the amounts of said assessments, taxes, payments made and amounts which are due and unpaid, and said exhibits are incorporated in this final judgment by reference.

It is therefore ORDERED and ADJUDGED as follows:

1. The assessments of the plaintiffs' subsurface rights for the tax years in dispute, as originally made by the Volusia County Property Appraiser, without reductions ordered by the 1977 Property Appraisal Adjustment Board, and the amounts of taxes for those years, the amounts paid prior to the trial, and the unpaid balance of taxes due, as reflected on Plaintiffs' Exhibits 6 and 7 (Ford and Speer); Plaintiffs' Exhibit 1 (Rudman and

Fuller); Defendants Exhibit 2; and Plaintiffs' Exhibit 19, are lawful and correct in all respects.

2. The total unpaid balances of said taxes as set forth in said exhibits in evidence, together with interest to the date of this judgment at the rate of 8% per annum as provided for in Section 194.192, Florida Statutes, is now adjudged to be due and payable by the respective plaintiffs to the Volusia County Finance Department. A summary of said unpaid balances of taxes and interest to and including the date of this judgment is set forth on Exhibit "A" attached to this judgment. Interest will continue to accrue on the amounts herein adjudged to be due, at the rate of 8% per annum, from and after the date of this judgment.

3. The temporary restraining orders heretofore entered in these actions are dissolved. Plaintiffs shall have thirty (30) days from the date of this judgment in which to pay the amounts provided for in this judgment, during which time all proceedings and procedures for enforcement of delinquent ad valorem real property taxes are stayed; provided, however, that nothing in this judgment shall stay or impair the rights of holders of tax certificates that have been issued as to any of the subject parcels, nor shall this judgment impair the rights of the plaintiffs to redeem said tax certificates in the manner provided by law. The summary of unpaid taxes and interest set forth on Exhibit "A" hereto is in addition to those sums and amounts of taxes, interest and penalties that may be required to be paid to redeem outstanding tax certificates.

4. The defendant, RANDY MILLER, as Executive Director of the Department of Revenue of the State of Florida, is hereby ordered and directed forthwith to take such action as may be appropriate and necessary to ensure that the provisions of Section 193.481, Florida Statutes, are faithfully implemented and enforced at the earliest possible time and, in any event, in sufficient time to ensure that Florida tax rolls for the 1981 tax year

comply with the mandatory provisions of said statute. The defendant, RANDY MILLER, as Executive Director of the said Department of Revenue, is further ordered and directed

a. to submit his report in writing to this Court on or before January 2, 1981, specifically describing the actions taken and proposed to be taken by the Department of Revenue, and the specific scheduling of such actions, to ensure the implementation and enforcement of the provisions of Section 193.481, Florida Statutes, in 1981 tax rolls; and, in addition thereto,

b. to submit his further reports in writing to this Court on or before the first days of February, 1981, and of each succeeding month thereafter, until further order of this Court. Said reports shall specifically describe the actions taken by the Department of Revenue subsequent to the last report submitted, together with a report of further actions proposed to be taken and the scheduling thereof, and a report of progress achieved in the implementation and enforcement of said statute.

5. It is further ordered that a copy of this final judgment shall be furnished forthwith to Honorable Bob Graham, Governor of the State of Florida, for his information and his consideration of such action as he may deem to be necessary and proper.

6. This Court retains jurisdiction of these actions for the following purposes:

a. To enforce payment of the amounts of taxes and interest herein adjudged to be due and payable, until all of said amounts have been paid in full.

b. To consider and either approve or disapprove the written reports of the Executive Director of the Department of Revenue provided for in paragraph 4 above, and to enter such further orders and directions to the said Executive Director as may be necessary and proper.

c. To enter such further orders as may be necessary and proper to enforce the provisions of this judgment and, in particular, the orders and directions set forth in paragraph 4 above.

7. Each party shall bear his own costs incurred in these actions prior to the date of this judgment.

DONE and ORDERED, in Circuit Court Chambers in Daytona Beach, Florida, this 18th day of November, 1980.

/s/ James T. Nelson
Circuit Judge

Conformed copies to:

William M. Barr, Esquire
P.O. Box 5725
Daytona Beach FL 32018

Honorable Bob Graham
Governor of the State of Florida
The Capitol
Tallahassee, FL 32301

Honorable Randy Miller
Executive Director
Department of Revenue of the State of Florida
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Tallahassee, FL

Harlan Tuck, Esquire
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Frank A. Ford, Esquire
P.O. Box 329
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Honorable Joseph C. Mellichamp, III
Assistant Attorney General
The Capitol
Tallahassee, FL 32301

EXHIBIT "A"

FINAL JUDGMENT DATED NOVEMBER 18, 1980

	Tax Year	Unpaid Principal Balance	Interest Through 11/17/80	Total Unpaid Balance
FORD	1975	$ 4,928.46	$1,844.92	$ 6,773.38
	1976	9,590.37	2,822.83	12,413.20
	1977	37,265.32	7,987.49	45,252.81
	1978	34,050.88	4,574.42	38,625.30
	1979	32,409.98	1,761.19	34,171.17
SPEER	1977	458.37	98.25	556.62
	1978	237.36	31.88	269.24
	1979	619.67	33.68	653.35
FULLER	1976	730.20	214.93	945.13
	1977	734.69	157.48	892.17
	1979	720.24	39.13	759.37
RUDMAN	1976	756.10	222.56	978.66
	1977	769.87	165.02	934.89
	1979	747.03	40.58	787.61

SUPREME COURT OF FLORIDA
Friday, November 4, 1983

Case No. 62,555

District Court of Appeal,
5th District—No. 81-147

DEPARTMENT OF REVENUE,
Petitioner,

v.

FRANK A. FORD, *et al.*,
Respondents.

Upon consideration of the Motion for Rehearing or Alternative Motion for Clarification and Further Relief filed in the above cause by attorney for respondents, and response thereto.

IT IS ORDERED that said Motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: /s/ Tanya Carroll
Deputy Clerk

TC

cc: Hon. Frank J. Habershaw, Clerk
Hon. James T. Nelson, Judge
Hon. V. Y. Smith, Clerk

Joseph C. Mellichamp, III, Esquire
William M. Barr, Esquire
Harlan Tuck, Esquire
Edwin P. B. Sanders, Esquire
Frank A. Ford, Esquire

SUPREME COURT OF FLORIDA

Case No. 62,555

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Petitioners,

vs.

FRANK A. FORD, ETC., *et al.*,
Respondents.

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Please take notice that pursuant to 28 U.S.C. § 2101 and § 1252(2), the Respondents FRANK A FORD, etc., et al., hereby appeal to the Supreme Court of the United States the Judgment of this Court dated September 8, 1983, rehearing having been denied November 4, 1983.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to: JOSEPH C. MELLICHAMP, III, Assistant Attorney General, The Capitol, LL04, Tallahassee, Florida 32301; WILLIAM M. BARR, Esquire, P.O. Box 5725, Daytona Beach, Florida 32018; and JOSEPH G. DYKES, JR., Esquire, P.O. Box 329, DeLand, Florida 32720, who are counsel for all of the parties required to be served, this 21st day of December, 1983, and that a copy hereof has been mailed for filing to the Honorable Frank J. Habershaw, Clerk of the Fifth District Court of Appeal of Florida, that being the court presently possessed of the record, this 21st day of DECEMBER, 1983.

/s/ Harlan Tuck
HARLAN TUCK of the firm
GILES, HEDRICK & ROBINSON, P.A.
109 E. Church St.—Suite 301
Orlando, Florida 32801
(305) 425-3591
Attorneys for Respondents.

FILED IN Supreme Court of Florida, on December 22, 1983.

SUPREME COURT OF FLORIDA

No. 62,555

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Petitioners,

vs.

FRANK A. FORD, ETC., *et al.*,
Respondents.

MOTION FOR HEARING ALTERNATIVE MOTION FOR CLARIFICATION AND FURTHER RELIEF

NOW COME the Respondents, by their counsel of record, pursuant to Rule 9.330 of the Rules of Appellate Procedure, and hereby move the Court for rehearing in this cause, or for clarification and further relief with regard to this Court's final opinion of September 8, 1983, respectfully submitting that the Court overlooked or misapprehended the matters and things set forth hereafter.

I.

1. This Court ordered that the District Court affirm the final judgment of the trial court, except for one matter not involved herein nor contested by Respondents. Thus this Court ordered the re-imposition of *personal* judgments against the Respondents, as found in paragraphs 2 and 6(a) of the decretal portion of the final judgment, which constitutes an unwarranted and *unconstitutional penalty against Respondents for having sought the aid of the Courts.* This question first arose by virtue of the Trial Court's final judgment itself; rehearing was denied by the Trial Court; the point was briefed in the District Court but not decided because it was rendered moot by the reversal.

Certiorari in this Court *was directed to the District Court's decision*; but now the Order of this Court to reinstate the final judgment raises once again the question of propriety of personal judgments, as to which the Respondents have not had a review.

The question has not been briefed in this Court. Respondents respectfully show the Court that Section 193.481, Florida Statutes, says in part:

> ". . . Such taxation shall be against such sub-surface interest and not against the owner or owners thereof. . . ."

No tax is owed by a taxpayer personally, but the statute calls for a lien against the interests taxed.

The only predicate for the Trial Court's personal judgment is Section 194.192(2), Florida Statutes, which says in part:

> "(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 8 percent per annum from the date the tax became delinquent. . . ."

The Constitution of Florida, Article I, Section 21, provides:

> "SECTION 21. *Access to courts.*—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

The conversion of a non-personal liability, so designated by statute, into a personal liability merely as a statutory condition of having sought access to the court for declaration of the validity of the tax, constitutes a wholly unwarranted burden on that constitutional right of access.

It goes without saying that such consequence may be highly prejudicial for the reason that a personal judgment recorded in the county may constitute a lien against other lands owned by the particular taxpayer. It results in a denial of equal protection merely from going to court.

This question does not appear to counsel to have been addressed directly by the courts of this state. There is a case which may be helpful, being *North Port Bank* v. *State, Department of Revenue*, 313 So.2d 683 (Fla. 1975), wherein a similar argument was made, but with regard to intangible taxes where some protection to the state reasonably may be required, by requiring the posting of a bond. This Supreme Court said at page 687 of the Reporter:

> "[2] In our opinion, the transitory nature of intangible taxes justified the state in adopting methods of collection which differ from those used to collect real property ad valorem taxes. Liens can be effectively imposed upon lands and improvements, but intangible property and its owners sometimes are difficult or impossible to locate.
>
> • • • •
>
> "[3] We think the statute requiring payment of the taxes, depositing the amounts claimed by the state into the registry of the court or, alternatively, posting bond for such amounts, if construed literally and without regard to Article I, Section 21, of the Constitution, would deny to Appellant access to the courts specifically granted by the Constitution and would deny due process and equal protection of the law."

Respondents believe the statements to be persuasive. The distinction applicable here is that we are not dealing with an intangible tax, but one against an interest in real property.

The consequence of a personal judgment is unjustified because the subsurface rights that have been taxed still

exist and are subject to a sale of Tax Certificates for the collection of tax in the normal way. To mandate conversion of non-personal liabilities and liens into personal liabilities and judgments as a consequence of Respondents having sought access to the court in good faith and having lost, violates the spirit and intention of Section 21 of the Declaration of Rights. Respondents recognize that the statute, Section 194.192(2), does not provide a precondition in the sense that the penalty is not applied until the judgment is made, but it is a precondition in the sense that in order to invoke the Circuit Court's jurisdiction one must submit to the changing of a lien against real property to one of personal liability and thus be subjected to collection in a manner different from all other taxpayers with the same or similar interests.

Respondents respectfully submit that the Judgment as entered by the Trial Court is an unconstitutional penalty applied to their right of access to the courts and respectfully submit that this Court should *not* order that it be affirmed in that regard.

II.

This Court has misapprehended the thrust of the trial as to uniformity and equal protection, has misapprehended the thrust of the appeal to the District Court on this issue, and has misapprehended the District Court's opinion on the issue of uniformity and equal protection. The cases cited on pages 3 and 4 of this Court's opinion show that a systematic discrimination as to assessments within a County is a breach of the equal protection right. ***That same principle must apply to multi-county taxing districts and valuation for assessments therein if there is to be valid taxation by and in such multi-county taxing districts.*** **The very existence of multi-county taxing districts now imposes a greater burden to achieve uniformity, *at least within the range of reasonable appraisal variation.***

The question of *comparative inequality* of assessed values is not even involved; since that concept *cannot be applied to a failure to tax on one hand as opposed to taxation of any amount on the other.* The opinion shows this misapprehension of the Court.

In *Deltona Corporation v. Bailey*, 336 So.2d 1163 (Fla. 1976), there was no allegation that all or substantially all similar property in the County was assessed at a lower cash value than the complainant's property; and the complaint was not sufficient. In *Spooner v. Askew*, 345 So.2d 1055 (Fla. 1977), there was only a 12% variation, which clearly is within a range of reasonable difference between appraisers. In *Straughn v. GAC Properties, Inc.*, 360 So.2d 385 (Fla. 1978), there was a disparity in valuation from $300.00 to $560.00 with regard to similar lots on either side of the Osceola-Polk County line, again a difference obviously within reasonable appraisal variation. On the other hand, would the Court in *Straughn* have held the same had the difference been from $300.00 to $56,000.00? Or would the Court have held the same if one county had valued at $300.00 while the other county refused altogether to tax similar property? The writer thinks not and that this Court misapprehended this cause when it cited principles concerning comparative inequality of assessed values. None of the cases involved a failure and refusal of taxing authorities to tax a certain class of property to its owners.

The misapprehension of this Supreme Court is further demonstrated at the top of page 8 of the opinion wherein the Court says the property owners suffer no financial detriment. The sub-surface rights owners are property owners. The fact that the sub-surface rights are taxed to the surface owners in other counties, but to the sub-surface owners in Volusia County, is a detriment to those who have to pay which conclusively demonstrates the want of equal protection; and it is not material that the amount ultimately received by the taxing authorities

would not be changed. The State does not have a right to equal protection. It is the taxpayers who have the right to equal protection, and the State is under the constitutional duty and may not "make *or enforce* any law which" denies that right of equal protection.

Respondents respectfully submit this Court's opinion on its face shows the want of equal protection, yet the Court refuses to enforce the right. Worse, the effect of the opinion is to say there is no remedy whatsoever for failure of the Department to perform its statutory duty to try to achieve the right; since injunctive or mandamus relief against the Department, if such litigation could be successfully brought against the Department in Leon County, would avail the taxpayers nothing as to the past, and the taxpayers attacked the assessments involved herein in the proper statutory way.

III.

The Respondents further respectfully submit that this Court has misapprehended the portion of the appeal to the District Court and the portion of the District Court opinion which concerned valuation criteria and that this Court has overlooked the testimony of Mr. DeBartolo himself with regard to his valuations.

The Court on page 7 of its opinion quoted from the Final Judgment as to Mr. DeBartolo's testimony. However, that summation by the trial court *does not make those recited facts true.* The *sufficiency of the evidence* with regard to those findings specifically was involved on the appeal to the District Court, predicated on Mr. DeBartolo's testimony.

This Court quoted the statutory criteria of Section 193.011, F.S. Nothing in those statutory criteria justifies the appraisal of sub-surface mineral rights to unknown minerals at $50.00 per acre, while sub-surface mineral rights to unknown minerals under adjoining land is ap-

praised at $800.00 per acre because of a shopping center or other valuable improvement on the surface of the adjoining land. Nothing in those statutory criteria authorizes the valuation of sub-surface mineral rights to unknown minerals with relation to the value of the surface or improvements thereon. Nothing in those statutory criteria authorizes the valuation of sub-surface mineral rights to unknown minerals with relation to zoning of the surface, which might even preclude recovery of unknown minerals. Nothing in those statutory criteria authorize the valuation of sub-surface mineral rights to unknown minerals on speculative future use of the surface, or even on speculative future use of the unknown minerals. Nothing in the statutory criteria authorizes consideration of sales which are not made in an open market, but only to a necessitous buyer where there can only be one such necessitous buyer. Nothing in those statutory criteria authorizes appraisals predicated on sales instigated by compulsion, and in fact the statutory criteria preclude such comparables. This Court must have overlooked Mr. DeBartolo's testimony which shows he did substantially all the above.

Mr. DeBartolo's testimony is uncontradicted that he predicated his valuations on speculative potential values to be derived from conversion of the rights for development. Mr. DeBartolo's testimony is uncontradicted that he utilized, as comparables, sales which were not arm's length transactions within the provisions of Section 193.011(1), F.S. and the Department's definition which condemns even the opportunity of one party to take advantage of exigencies of the other.

The cases of *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965); *Keith Investments, Inc. v. James*, 220 So.2d 695 (Fla. 4th DCA 1969); *Williams v. Simpson*, 209 So.2d 262 (Fla. 1st DCA 1968), cert. den. 212 So.2d 629; and *Strong v. Tuck*, 354 So.2d 368 (Fla. 1977), all show that the appraiser's criteria and utilization of the statutory

criteria, as opposed to weight to be given individual items, are reviewable by the Courts. This Court has overlooked or misapprehended Mr. DeBartolo's own testimony which showed conclusively that he utilized speculative and inadmissible criteria and improper comparables, and that he did not appraise the mineral rights for their inherent value as mineral rights, all as required by this Court's cases of *Camp Phosphate Company v. Allen*, 77 Fla. 341, 81 So. 503 (1919), and *Dickinson v. Davis*, 224 So.2d 262 (Fla. 1969).

For all the above reasons, the Respondents most respectfully move for rehearing and for clarification and further relief and most respectfully urge this Court to reconsider its opinion in this cause.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to: JOSEPH C. MELLICAMP, III, Assistant Attorney General, The Capitol, LL04, Tallahassee, Florida 32301; WILLIAM M. BARR, Esquire, P.O. Box 5725, Daytona Beach, Florida 32018; and JOSEPH G. DYKES, JR., Esquire, P.O. Box 329, DeLand, Florida 32730, this 19 day of SEPTEMBER 1983.

/s/ Harlan Tuck
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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

Case No. 62,555

FLORIDA DEPARTMENT OF REVENUE, ETC., *et al.*,
Appellants,

vs.

FRANK A. FORD, ETC., *et al.*,
Appellees.

ON REVIEW OF DECISION OF
THE FIFTH DISTRICT COURT OF APPEAL

BRIEF OF APPELLEES, FRANK A. FORD AND EUGENE SPEER

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Attorneys for Appellees,
Frank A. Ford and
Eugene Speer.

STATEMENT OF THE CASE AND OF THE FACTS

Appeal to this Court was taken by the Florida Department of Revenue from a decision of the Fifth District Court of Appeal holding that Section 193.481, Florida Statutes was facially constitutional, but that it had been applied unconstitutionally to the complaining taxpayers. Thereafter John W. Turner, Jr., as property appraiser of Volusia County, and others filed a joinder in the appeal. Appellees moved to dismiss the appeal on the ground that Article V, Section 3(b)(1), Florida Constitution, no longer authorizes appeals to the Supreme Court from such decisions of District Courts, and on the further ground that the Florida Department of Revenue, having won its appeal in the District Court, was without standing. That motion has not been ruled on by this Court, as of the time of preparation of this Brief.

Here we consider two basic holdings of the District Court opinion. The first goes to unconstitutional application of Section 193.481, Florida Statutes, under uniformity and equal protection requirements. The District Court in its opinion spoke more to uniformity under Florida constitutional and statutory requirements than it did to equal protection under the Fourteenth Amendment. The second principal holding of the District Court opinion goes to the improper consideration and valuation by the Volusia County appraiser of factors not within the purview of Section 193.011, Florida Statutes.

* * * *

ARGUMENT II
UNCONSTITUTIONAL APPLICATION OF SECTION 193.481, FLORIDA STATUTES

It is incredible that the Appellants argue that the taxpayers have suffered no financial detriment through want of separate assessments elsewhere (Department's brief, pp. 16, 17, 27; Appraiser's brief, p. 27). The Department cares not that the entire value is assessed against surface

owners in other parts of the state. From the Department's point of view, it makes no difference who pays, as long as just value overall is assessed. The same amount of money flows to the coffers of the taxing units under Section 193.481(3), Florida Statutes. *Appellees submit, however, that the question of who pays the bill is an important and fundamental one to taxpayers.* This goes to the heart of equal protection under the Fourteenth Amendment of the Constitution of the United States, and the trial judge made the essential finding when he held that "Plaintiffs' feet are held to the fire in Volusia County while *identically situated* owners of sub-surface rights in other Florida counties are *deliberately and systematically given a free ride.*" (emphasis supplied) Equal protection under the Fourteenth Amendment is not a "massive brouhaha".

• • • •

In the Final Judgment, the trial court used traditional magic words when, as indicated earlier herein, he recognized the fire of taxation that is held in Volusia County to the feet of the Plaintiffs "while *identically situated* owners of sub-surface rights in other Florida counties are *deliberately and systematically given a free ride.*" (emphasis supplied) The trial court described the situation as "glaring, indisputable inequality among ad valorem tax rolls of different counties in the St. Johns Water Management District." Those findings conclusively show denial of equal protection under the Fourteenth Amendment of the Constitution of the United States, beyond and above the Constitution and statutes of Florida.

• • • •

The right of equal protection guaranteed under the Fourteenth Amendment of the Constitution of the United States goes not necessarily to proper application of the law, but to equal improper application of it, if that is to be the case, or equal lack of application of it altogether,

if it is not to be enforced. The restriction on the power of the State requires that persons receive *equal protection even if it pertains to misapplication of the law or failure and refusal to apply the law.* This has been ruled upon directly by the Supreme Court of the United States in cases quoted approvingly by this Court. In *Dade County v. Salter, supra,* this Court said:

> "[2-4] Our Constitution provides for equality and uniformity of the burden of taxation. Article IX, Section 1, F.S.A. A taxpayer who by virtue of the acts of the Tax Assessor has been denied this constitutional right should not be precluded from relief because the sworn official has not performed the duty requiring him to assess all property at its full cash value. Nor does the granting of relief to these taxpayers in any respect affect or impair or be in any way inconsistent with the recent decisions of this Court holding that all real property in this State should be assessed at its full cash value. In *Cosen Investment Company, Inc. v. Overstreet,* 154 Fla. 416, 17 So.2d 788 (relied upon so heavily in the opinion), there was no allegation that all of the property of the county was assessed at less than its full cash value. The allegation there was that similar property was assessed at less value than plaintiff's property. There the Court correctly held under the facts there before us that 'to perpetuate the practice of assessing all property at a less percentage than that directed by the statute * * * would necessarily result in favoring the homesteads.' We emphasize again that the case before us is entirely different and to grant relief to these property owners would in no way perpetuate such practice, but *even if it would we are faced with the alternative of denying these property owners the constitutional guaranty of equality and uniformity in taxation in order to enforce a mandate on the assessor to assess property at its fair cash value.* The Supreme Court of the United States many years ago

dealt with the identical problems in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, where Mr. Chief Justice Taft, speaking for the Court said:

"* * * *This court holds that the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.'*

The Court then observed that to deny relief to the taxpayer would uphold the violation of the Fourteenth Amendment to the injury of the taxpayer in that litigation. The conclusion is unescapable that the same result would be inflicted upon the taxpayers in this litigation.

To adhere to the opinion which has been filed would require these taxpayers, and other taxpayers who might find themselves in the same position in any of the sixty-seven counties in this State, to successfully institute and prosecute proceedings to require the assessor to raise all other properties in the county to the statutory valuation, a burden which in most instances would amount to depriving the taxpayer of any remedy whatever, in order to obtain relief. This question was also considered by the Supreme Court of the United States in *Sioux City Bridge Co. v. Dakota County*, supra, where Mr. Chief Justice Taft, again speaking for the Court said:

"* * * The conclusion in these and other federal authorities is that such a result as that reached by

> the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district.' (emphasis supplied)

See the same holdings in the *Southern Bell Telephone & Tel. Company v. County of Dade* case, supra.

* * * *

Appellants are oblivious to the supremacy clause of the Constitution of United States. As previously pointed out herein, the *Dade County v. Salter* case quoted the United States Supreme Court in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 43 S. Ct. 190, L.Ed. 340, in holding that the true remedy was to require reduction of the assessments to conform to others. The various appraisers, particularly those of other counties within the St. Johns Water Management District, are constitutional officers exercising state power, along with the Department of Revenue. If those authorities systematically exclude taxation of mineral rights in most counties, that systematic exclusion must be uniform. Otherwise, there is a denial of the Fourteenth Amendment right to equal protection, *which is a higher right by virtue of the supremacy clause.*

* * * *

IN THE SUPREME COURT OF FLORIDA

Wednesday, December 29, 1982

Case No. 62,555

DEPARTMENT OF REVENUE,
Petitioner,

vs.

FRANK A. FORD, ETC., *et al.*,
Respondents.

The notice of appeal in the above cause is hereby treated as a Petition for Review under Article V. Section 3(b)(3), and granted.

IT IS FURTHER ORDERED that said cause is set for oral argument at 9:30 a.m. TUESDAY, FEBRUARY 8, 1983, with a maximum of twenty (20) minutes to the side allowed for argument.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

By: /s/ Sara Gainey
Deputy Clerk

sg
cc: Giles, Hedrick & Robinson
Joseph C. Mellichamp, III, Esquire
Raymond, Wilson, Conway, Barr, Burrows & Jester
Edwin P. B. Sanders, Esquire
Frank A. Ford, Esquire

CONSTITUTION OF THE STATE OF FLORIDA

ART. VII

SECTION 2. Taxes; rate.—All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; provided, as to any obligations secured by mortgage, deed of trust, or other lien on real estate wherever located, an intangible tax of not more than two mills on the dollar may be levied by law to be in lieu of all other intangible assessments on such obligations.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

CHAPTER 193
ASSESSMENTS

PART I GENERAL
(ss. 193.441-193.623)

PART II SPECIAL CLASSES OF PROPERTY
(ss. 193.011-193.132)

PART I
GENERAL

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable local or state land use regulation and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium prohibits or restricts the development or improvement of property as otherwise authorized by applicable law;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

193.461 Agricultural lands; classification and assessment.—

(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.

(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the property appraisal adjustment board. The board may also review all lands classified by the property appraiser upon its own motion. The property appraiser shall have available at his office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted.

(3) (a) No lands shall be classified as agricultural lands unless a return is filed on or before March 1 of each year. The property appraiser, before so classifying said lands, may require the taxpayer or his representative to furnish the property appraiser such information as may reasonably be required to establish that said lands were actually used for a bona fide agricultural purpose. Failure to make timely application by March 1 shall constitute a waiver for 1 year of the privilege herein granted for agricultural assessment. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form as provided by the department.

(b) Subject to the restrictions set out in this section, only lands which are used primarily for bona fide agricultural purposes shall be classified agricultural. "Bona fide agricultural purposes" means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

1. The length of time the land has been so utilized;

2. Whether the use has been continuous;

3. The purchase price paid;

4. Size, as it relates to specific agricultural use;

5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;

6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and

7. Such other factors as may from time to time become applicable.

(c) The maintenance of a dwelling on part of the lands used for agricultural purposes shall not in itself preclude an agricultural classification.

(4) (a) The property appraiser shall reclassify the following lands as nonagricultural;

1. Land diverted from an agricultural to a nonagricultural use;

2. Land no longer being utilized for agricultural purposes;

3. Land that has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this law; or

4. Land for which the owner has recorded a subdivision plat subsequent to the enactment of this law.

(b) The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.

(c) Sale of land for a purchase price which is 3 or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.

(5) For the purpose of this section, "agricultural purposes" shall include horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; and all forms of farm products and farm production.

(6) (a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:

1. The quantity and size of the property;

2. The condition of said property;

3. The present market value of said property as agricultural land;

4. The income produced by said property;

5. The productivity of land in its present use;

6. The economic merchantability of the agricultural product; and

7. Such other agricultural factors as may from time to time become applicable.

(b) In years in which proper application for agricultural assessment has not been made the land shall be assessed under the provisions of s. 193.011.

193.481 Assessment of oil, mineral, and other subsurface rights.—

(1) Whenever the mineral, oil, gas, and other subsurface rights in or to real property in this state shall have been sold or otherwise transferred by the owner of such real property, or retained or acquired through reservation or otherwise, such subsurface rights shall be taken and treated as an interest in real property subject to taxation separate and apart from the fee or ownership of the fee or other interest in the fee. Such mineral, oil, gas, and other subsurface rights, when separated from the fee or other interest in the fee, shall be subject to separate taxation. Such taxation shall be against such subsurface interest and not against the owner or owners thereof or

against separate interests or rights in or to such subsurface rights.

(2) The property appraiser shall, upon request of the owner of real property who also owns mineral, oil, gas, or other subsurface mineral rights to the same property, separately assess the subsurface mineral right and the remainder of the real estate as separate items on the tax roll.

(3) Such subsurface rights shall be assessed on the basis of a just valuation, as required by s. 4, Art. VII of the State Constitution, which valuation, when combined with the value of the remaining surface and undisposed of subsurface interests, shall not exceed the full just value of the fee title of the lands involved, including such subsurface rights.

(4) Statutes and regulations, not in conflict with the provisions herein, relating to the assessment and collection of ad valorem taxes on real property, shall apply to the separate assessment and taxation of such subsurface rights, insofar as they may be applied.

(5) Tax certificates and tax liens encumbering subsurface rights, as aforesaid, may be acquired, purchased, transferred, and enforced as are tax certificates and tax liens encumbering real property generally, including the issuance of a tax deed.

(6) Nothing contained in chapter 69-60. Laws of Florida, amending subsections (1) and (3) of this section and creating s. 197.083 shall be construed to affect any contractual obligation existing on June 4, 1969.

CHAPTER 194
ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

PART I ADMINISTRATIVE REVIEW

(ss. 194.011-194.032)

PART II JUDICIAL REVIEW

(ss. 194.171-194.231)

PART I
ADMINISTRATIVE REVIEW

194.032 Hearing complaints.—

(6) Appeals of the board's decision shall be as follows:

(b) Any taxpayer may bring an action to contest a tax assessment pursuant to s. 194.171.

(c) The circuit court proceeding shall be de novo, and the burden of proof shall be upon the party initiating the action.

PART II
JUDICIAL REVIEW

194.171 Circuit court to have original jurisdiction in tax cases.—

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2).

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector the amount

of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) No action to contest a tax assessment may be maintained unless all taxes on the property which the taxpayer in good faith admits to be owing, including taxes assessed in years after the action is brought, are paid before they become delinquent.

(5) Pending actions to contest tax assessments shall be dismissed unless the taxpayer shall have paid to the collector all taxes on the property which he in good faith admits to be owing, including taxes assessed in years after the action is brought.

(6) The clerk of the circuit court shall, after deducting his statutory fee, pay to the collector all taxes which have been admitted to be due and have been deposited in the registry of the court in connection with pending actions to contest tax assessments.

194.181 Parties to a tax suit.—

(1) The plaintiff in any tax suit shall be:

(a) The taxpayer contesting the assessment of any tax, the payment of which he is responsible for under the law; or

(b) The property appraiser pursuant to s. 194.032.

(2) In any case contesting the assessment of any property brought by the taxpayer, the county property appraiser shall be party defendant. In any case brought by the property appraiser pursuant to s. 194.032(6)(a) 1. or 2., the taxpayer shall be party defendant. In any case brought by the property appraiser pursuant to subparagraph 194.032 (6)(a) 3., the property appraisal adjustment board shall be party defendant.

(3) In any suit involving the collection of any tax on property, as well as questions relating to tax certificates

or tax deeds, the tax collector charged under the law with collecting such tax shall be the defendant.

(4) In any suit involving a tax other than an ad valorem tax on property, the tax collector charged under the law with collecting such tax shall be defendant. However, this section shall not apply in any instance wherein general law provides for some other person to be the party defendant.

(5) In any suit in which the assessment of any tax, or the collection of any tax, tax certificate, or tax deed is contested on the ground that it is contrary to the State Constitution, the official of the state government responsible for overall supervision of the assessment and collection of such tax shall be made a party defendant of such suit. Any such suit shall be brought in that county having venue under s. 194.171 or, when that section is inapplicable, in the circuit court of Leon County, and the attorney for the defendant county officer shall upon request represent the state official in any such suit or proceeding, for which he shall receive no additional compensation.

(6) In any suit in which the validity of any statute or regulation found in, or issued pursuant to, chapters 192 through 197, inclusive, is contested, the public officer affected may be a party plaintiff.

194.192 Costs; interest on unpaid taxes; penalty.—

(1) In any suit involving the assessment or collection of any tax, the court shall assess all costs.

(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 8 percent per annum from the date the tax became delinquent or from January 1, 1971, whichever is later, and at the rate of

6 percent per annum for any period of delinquency before January 1, 1971. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 10 percent of the deficiency per annum from the date the tax became delinquent.

Ch. 55

JUDGMENTS

55.10 Judgments and decrees; lien of all, generally; transfer of liens of security.—

(1) A judgment or decree becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, whichever is maintained at the time of recordation.

CHAPTER 195

PROPERTY ASSESSMENT ADMINISTRATION AND FINANCE

195.0011 Short title.—Chapter 195 shall be known as the "Property Assessment Administration and Finance Law."

History.—s. 1, ch. 73-172.

195.0012 Legislative intent.—It is declared to be the legislative purpose and intent in this entire chapter to recognize and fulfill the state's responsibility to secure a just valuation for ad valorem tax purposes of all property and to provide for a uniform assessment as between property within each county and property in every other county or taxing district.

History.—s. 47, ch. 70.243, s. 2, ch. 73-172.

Note.—Former s. 195.111.

195.002 Supervision by Department of Revenue.—The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. It shall also have supervision over tax collection and all other aspects of the administration of such taxes. The supervision of the department shall consist primarily of aiding and assisting county officers in the assessing and collection functions, with particular emphasis on the more technical aspects. In this regard, the department shall conduct schools to upgrade assessment skills of both state and local assessment personnel.

195.027 Rules and regulations.—

(1) The Department of Revenue shall prescribe reasonable rules and regulations for the assessing and collecting of taxes, and such rules and regulations shall be followed by the property appraisers, tax collectors, clerks of the circuit court, and property appraisal adjustment boards. It is hereby declared to be the legislative intent that the department shall formulate such rules and regulations that property will be assessed, taxes will be collected, and the administration will be uniform, just, and otherwise in compliance with the requirements of the general law and the constitution.

195.032 Establishment of standards of value.—In furtherance of the requirement set out in s. 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, to be used by property appraisers in all counties, including taxing districts, to aid and assist them in arriving at assessments of all property. The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valua-

tion of particular types of property consistent with ss. 193.011 and 193.461. The standard measures of value shall assist the property appraiser in the valuation of property and be deemed prima facie correct, but shall not be deemed to establish the just value of any property.

195.092 Authority to bring and maintain suits.—

(1) The Department of Revenue shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, rule, regulation, or decision of the Department of Revenue lawfully made under the authority of these tax laws. Venue for such actions shall be in the county in which the official duties of the property appraiser are to be performed.

[1] 195.096 Review of assessment rolls.—

(1) The assessment rolls of each county shall be subject to review by the Division of Ad Valorem Tax.

(2) Beginning with the 1982 assessment rolls, the Division of Ad Valorem Tax shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. Said review shall be conducted for the 1981 assessment rolls of not less than 20 counties; however, said review need not include the 1981 personal property rolls. The Division of Ad Valorem Tax need not individually study every use-class of property set forth in s. 195.073, but shall at a minimum study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review may include proceedings of the property appraisal adjustment board.

(a) The Division of Ad Valorem Tax shall, at least 30 days prior to the beginning of an in-depth review in

any county, notify the property appraiser in the county of the pending review. At the request of the property appraiser, the Division of Ad Valorem Tax shall consult with the property appraiser regarding the classifications and strata to be studied, in order that the review will be useful to the property appraiser in evaluating his procedures.

(b) Every property appraiser whose upcoming roll is subject to an in-depth review shall, if requested by the department on or before January 1, deliver upon completion of the assessment roll a list of the parcel numbers of all parcels that did not appear on the assessment roll of the previous year, indicating the parcel number of the parent parcel from which each new parcel was created or "cut out."

(c) In the conduct of assessment ratio studies, the Division of Ad Valorem Tax shall utilize a statistically reliable sample of properties in tests of each classification, stratum, or roll made the subject of a ratio study published by it. The department shall compute the median and the value-weighed mean for each classification or subclassification studied and for the roll as a whole.

(d) In the conduct of these reviews, the Division of Ad Valorem Tax shall adhere to all standards to which the property appraisers are required to adhere.

(e) The Division of Ad Valorem Tax and each property appraiser shall cooperate in the conduct of these reviews, and each shall make available to the other all matters and records bearing on the preparation and computation of the reviews. The property appraisers shall provide any and all data requested by the Division of Ad Valorem Tax in conduct of the studies, including electronic data processing tapes. The Division of Ad Valorem Tax shall provide any and all data requested by a property appraiser developed or obtained in the conduct of the studies, including tapes. Direct reimbursable costs of providing the data

shall be borne by the party who requested it. Copies of existing data or records, whether maintained or required pursuant to law or rule, or data or records othewise maintained, shall be submitted within 30 days from the date requested, in the case of written or printed information, and within 14 days from the date requested, in the case of computerized information.

(f) Within 120 days following the receipt of the county's assessment roll by the executive director of the department pursuant to s. 193.114(5), or within 10 days of approval of the assessment roll, whichever is later, the Division of Ad Valorem Tax shall complete a county's review and forward its findings, including a statement of the confidence interval for the median and such other measures as may be appropriate for each classification or subclassification studied and for the roll as a whole, employing a 95-percent level of confidence, and related statistical and analytical details to the Senate Ways and Means Committee, the House Finance and Taxation Committee, and the appropriate property appraiser.

(3)(a) No later than November 1 of each year, the Division of Ad Valorem Tax shall publish the results of reviews conducted pursuant to this section. The results shall include all statistical and analytical measures computed pursuant to this section for the real property assessment roll as a whole, the personal property assessment roll as a whole, and independently for the following real property classes:

1. Single-family, condominium, cooperative, mobile home, and other owner-occupied residential property.

2. Residential income property.

3. Agricultural and other use-valued property.

4. Vacant lots.

5. Nonagricultural acreage and other undeveloped parcels.

6. Institutional and governmental property.

7. Improved commercial property.

8. Improved industrial, utility, locally assessed railroad, oil, gas and mineral lands, subsurface rights, and other real property.

The division shall also publish such results for any subclassifications of the above classes or assessment rolls it may have chosen to study. For each improved subclassification or property class and for the real property roll as a whole, the division shall also publish separate assessment ratio statistics for land valuations and for improvement valuations.

(b) When necessary for compliance with s. 236.081, and for those counties not being studied in the current year, the Division of Ad Valorem Tax shall project value-weighted mean levels of assessment for each county. The Division of Ad Valorem Tax shall make its projection based upon the best information available, utilizing professionally accepted methodology, and shall separately allocate changes in total assessed value to:

1. New construction, additions, and deletions.

2. Changes in the value of the dollar.

3. Changes in the market value of property other than those attributable to changes in the value of the dollar.

4. Changes in the level assessment.

In lieu of the statistical and analytical measures published pursuant to paragraph (a), the department shall publish details concerning the computation of estimated assessment levels and the allocation of changes in assessed value for those counties not subject to an in-depth review.

(4) It is declared to be the legislative intent that approval of the rolls by the department pursuant to s.

193.114(5) and certification by the property appraisal adjustment board pursuant to s. 193.122(1) shall not be deemed to impugn the use of postcertification reviews to require adjustments in the preparation of succeeding assessment rolls to ensure that such succeeding assessment rolls do meet the constitutional mandates of just value.

(5) It is the legislative intent that the Division of Ad Valorem Tax utilize to the fullest extent practicable objective measures of market value in the conduct of reviews pursuant to this section.

(6) Reviews conducted pursuant to this section shall include an evaluation of whether nonhomestead exempt values determined by the appraiser pursuant to applicable provisions of chapter 196 are correct and whether agricultural classifications were granted in accordance with law.

(7) The Auditor General shall have the responsibility to perform performance audits of the administration of ad valorem tax laws by the department pursuant to the general authority granted in chapter 11. Such performance audits shall be conducted no less frequently than once every 3 years. A performance audit of the Ad Valorem Tax Division shall be submitted to the Legislature no later than October 1, 1981.

(8) When a roll is prepared as an interim roll pursuant to s. 193.1145, the department shall compute assessment levels for both the interim roll and the final approved roll.

(9) Chapter 120 shall not apply to this section.

(10)(a) The department shall periodically review the assessments of new, rebuilt, and expanded business reported according to s. 193.077(3), to ensure parity of level of assessment with other classifications of property.

(b) The provisions of this subsection shall expire and be void on December 31, 1986.

History.—s. 7, ch. 73-172; ss. 11, 21, ch. 74-234; s. 2, ch. 75-211; s. 13, ch. 76-133; ss. 7, 10, ch. 80-248; s. 18, ch. 80-274.

[1] Note.—The amendment of this section by s. 18 of ch. 80-274 during the special session of June 6, 1980, failed to incorporate the amendment of the same section by ss. 7 and 10 of ch. 80-248 during the regular session. Although the circumstance that separate sessions were involved takes the transaction out of the operation of s. 1.04, there was no apparent legislative intent to nullify the amendment of the regular session. Therefore, the section as published gives full effect to both amendments.

[1] 195.097 Postaudit notification of defects; supervision by the department.—

(1) Upon evaluation of any reviews, studies, or findings of the Division of Ad Valorem Tax, the executive director of the department shall issue a notice to any property appraiser who he has determined has one or more classes or other strata of property listed on the assessment rolls in a manner inconsistent with the requirements of law, or is otherwise not assessing in accordance with law. The executive director shall specify in his notice the classes or strata of property that have been improperly assessed on the prior year's roll, the nature of the defect or defects, and the requirements of the department to obtain approval of the current year's assessment roll. Such notice shall be provided to the property appraiser no later than November 15.

(2) Within 15 days after receipt of a notice, but no later than December 1, the property appraiser shall either notify the executive director in writing of his intention to comply or request an immediate conference with the executive director for the purpose of attempting to resolve differences between himself and the executive director. Such conference shall be held no later than December 15.

At the conclusion of the conference, but no later than January 1, the executive director shall issue his administrative order, which order shall incorporate the remedial steps, if any, to be taken by the property appraiser to ensure that all property on his rolls is assessed at just value. An administrative order shall also be issued in the case of a property appraiser who has stated his intention to comply.

(3) Upon receipt of an administrative order issued pursuant to this section, but not later than January 15, the property appraiser shall notify the department of his intent to comply with said order or of the basis for his intended noncompliance. Upon receipt of a notice of intended noncompliance, the department shall take such action as it deems necessary pursuant to s. 195.092.

(4) Upon the issuance of the administrative order, the Division of Ad Valorem Tax shall commence continuing supervision of the preparation of the current rolls to ensure that every reasonable effort is being taken by the property appraiser to comply with the order. Supervision may include, but shall not be limited to, the conduct of ratio or other mass-data studies on the roll being prepared, onsite inspection of the property appraiser's office or field operations, and interviews with the property appraiser's personnel or consultants. The executive director may require the property appraiser to certify in writing the specific steps taken to comply with the administrative order. During such supervision, the executive director may seek any judicial remedy available to him under law to force compliance with his order, and may request removal of the property appraiser by the Governor when he deems such action necessary. No later than May 1, the executive director shall notify the proper appraiser, in writing, as to whether he is in substantial compliance with the order. In the event that the executive director determines that the property appraiser is not in substantial compliance at that time, he shall send to the property

appraiser and the governing body of each tax-levying agency in the county a notice of intent to disapprove the tax roll in whole or in part.

(5) The dates specified in this section shall be extended if the date for completion of the current or prior year's roll was extended pursuant to s. 193.023(1), or records or data requested in writing pursuant to s. 195.096(2)(e) were not submitted within the time allowed by law. The length of extension of dates specified in this section shall be equal to:

(a) The number of days the date for completion of the rolls was extended; or

(b) The number of days from the time the data or records were required by law to be submitted until the time received by the department.

(6) The department shall review the assessments of new and expanded businesses granted an exemption pursuant to s. 196.1995 to ensure parity of level of assessment with other classifications of property.

(7) Chapter 120 shall not apply to this section.

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Office - Supreme Court, U.S.
FILED
MAR 30 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1193

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

FRANK A. FORD, ETC., et al.,
Appellants,

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA ETC., et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

MOTION TO DISMISS OR AFFIRM AND APPENDIX

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MOTION TO DISMISS OR AFFIRM

Appellees respectfully move the Court to dismiss this appeal or to affirm the judgment of the Supreme Court of Florida on the following grounds:

I. Appellants' federal constitutional objection to Section 194.192(2), Florida Statutes, was not presented timely or adequately to the Supreme Court of Florida.

II. Appellants waived their objections to Section 194.192(2), Florida Statutes, by voluntarily submitting themselves to its terms and conditions.

III. Appellants lack standing to complain that all subsurface rights are not separately

assessed in other Florida counties.

IV. The judgment of the Florida Supreme Court rests on an adequate non-federal basis.

V. The appeal does not present a substantial federal question.

STATEMENT

Appellants are owners of separated oil, gas, mineral and other subsurface rights in Volusia County, Florida. In the consolidated cases below, they objected to separate assessment of their separately-owned subsurface rights by the Volusia County Property Appraiser. Such separate assessment of separately-owned surface and subsurface rights is required by Section 193.481, Florida Statutes. (App. 81a)[1]

After a non-jury trial, the Circuit Court for Volusia County, Florida, adjudged that the subject assessments were

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[1]The following abbreviations are used:

"App" for Appendix to Jurisdictional Statement.

"MD-App" for Appendix to Motion to Dismiss or Affirm.

lawful and correct in all respects. (App. 55a) The court entered personal judgments against the taxpayers for the unpaid taxes and interest found to be due and payable, in accordance with Section 194.192, Florida Statutes. On rehearing in the trial court and later on rehearing in the Supreme Court of Florida, the appellants complained that the personal judgment provision of Section 194.192 violates the court access provision of the Florida Constitution.

Appellants claimed in the trial court that they are victims of discriminatory enforcement of the subsurface rights statute because property appraisers in some other Florida counties are not diligently identifying and separately assessing separately-owned subsurface rights. For that and numerous other

reasons they prayed that the collection of their own assessments be enjoined. (MD-App. 1) Appellants did not pray for the enforcement of the statute in other counties.[2] (MD-App. 1)

Although the trial court refused to cancel appellants' assessments, it declared that its judicial conscience was shocked by the evidence of the lack of diligent enforcement of the subsurface rights statute in other counties. (App. 51a) The trial court therefore ordered the Florida Department of Revenue to take appropriate action to enforce Section 193.481, Florida Statutes, in

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[2]Appellants' claims are in the nature of private, individual taxpayer actions, brought for the purpose of cancelling their own taxes. They are not taxpayer class actions brought to protect the rights of other taxpayers or the public interest.

other counties, despite the fact that such relief had not been requested by any party. (App. 55a)

On appeal, the Fifth District Court of Appeal of Florida reversed the final judgment. (App. 12a) The district court ruled that the statute had been unconstitutionally applied to the appellants and it therefore ordered the trial court to cancel appellants' taxes.[3] (App. 31a-32a) The district court also reversed the trial court's order directing the Department of Revenue to take action to enforce the statute, because that relief was outside the pleadings

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[3]The district court merely declared that the statute had been "unconstitutionally applied" without identifying any specific constitution or constitutional provision. (App. 31a) The ruling does not appear to be based on federal grounds because no federal authorities are cited in the opinion.

and had not been prayed for. (App. 30a-31a)

The Supreme Court of Florida confirmed the trial court's finding that the appellants' assessments are lawful and valid. (App. 9a) The Court pointed out that the appellants had suffered no financial detriment whatsoever by the lack of separate assessment of separately-owned subsurface rights elsewhere because that merely means that the entire value of the parcel is assessed against the surface owner. (App. 10a) The Court also rejected the appellants' argument that their valid tax assessments should be cancelled on account of assessment errors in other counties. (App.3a-4a) Accordingly, the Supreme Court quashed the district court decision insofar as it ordered the trial court to cancel

appellants' assessments. (App. 10a) The Court approved that portion of the district court decision which reversed the trial court's order directing the Department to take action to enforce the statute. (App. 10a) The Court declared that the mandatory provisions of the subsurface rights statute must be implemented but held that that must be done without retention of jurisdiction by the trial court. (App. 10a)

In the trial court, appellants called property appraisers or their assistants from 7 Florida counties, whose testimony revealed less than diligent efforts in those counties to search land title records to identify and separately assess separately-owned subsurface rights.[4]

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[4]The 7 counties are within the St. Johns River Water Management District, a 19-county multi-county taxing district

-Footnote Continued-

(MD-App. 2 et seq.) However, the testimony of those taxing officers generally revealed a willingness to separately-assess such interests when requested to do so by either surface or subsurface owners or when such interests came to their attention by current conveyances or otherwise. (MD-App. 6, 10, 13-14, 17) The testimony also revealed that very few requests for separate assessment are received from either surface or subsurface owners. The testimony did not reveal a refusal by any taxing officer to separately assess separately-owned subsurface rights when requested to do

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Footnote Continued

[4]which also includes Volusia County. Section 373.069(2)(c), Florida Statutes. The entire State of Florida is subdivided into 67 counties. Chapter 7, Florida Statutes.

so.[5]

The evidence merely revealed a lack of diligence in separately assessing subsurface rights in some counties, and an improper inclusion of the value of such rights in a single assessment of the entire fee. The evidence did not reveal any ommission or systematic under-evaluation of property.[6]

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[5]The Marion County Property Appraiser testified that he had received requests or returns on about 4 parcels of mineral rights but had not separately assessed them upon checking them out and finding that they conflicted with the cleared titles in a large subdivision. (MD-App. 8-9)

[6]Appellants' complaint is that some separately-owned subsurface rights in some other counties are not assessed separately. As appellants stated in their motion for rehearing in the Supreme Court of Florida, "The question of comparative inequality of assessed values is not even involved . . . . " (Emphasis in original.) (App. 65a)

ARGUMENT

I.

Appellants' federal constitutional objection to Section 194.192(2), Florida Statutes, was not presented timely or adequately to the Supreme Court of Florida.

Appellants contend here that Section 194.192(2), Florida Statutes, (App. 85a) which provides for entry of a personal judgment against taxpayer litigants in the amount of the taxes adjudged to be due plus interest, violates the equal protection clause of the 14th Amendment of the United States Constitution.

The Supreme Court of Florida did not consider the statute nor did it mention it in its decision. (App. 1a)

Appellants objected to the statute in the Supreme Court of Florida for the first time in their motion for

rehearing.[7] (App. 61a) Moreover, their objection was based on State grounds, not federal grounds. They argued that the statute violates Article I, Section 21 of the Florida Constitution, which guarantees access to Florida courts. (App. 62a-64a) Although appellants used the

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[7]Appellants fail to offer any credible excuse for their failure to present their objection to the Supreme Court of Florida prior to rehearing. They cannot claim that they did not have an opportunity to raise the objection earlier or that the objection arose in the Supreme Court decision itself and took them by surprise. The personal judgment to which they object was entered by the trial court on November 18, 1980, (App. 33a) almost three years before the Florida Supreme Court filed its decision on September 8, 1983. (App. 1a)

In the Supreme Court of Florida, appellants asserted numerous arguments in opposition to the trial court's judgment and in support of the district court's decision. Nothing disabled them from asserting their personal judgment objection and their neglect to do so is a waiver under Florida law. Nelson v. Seldon Cypress Door Co., 78 Fla. 203, 83 So.286 (1919).

expression "denial of equal protection", they did so in their argument based on the Florida Constitution. (App. 63a) They did not mention the United States Constitution or any federal authorities whatsoever. The Florida Supreme Court denied rehearing without opinion.[8] (App. 59a)

Assuming arguendo that appellants asserted their federal objection to the statute in their motion for rehearing, their objection was untimely. Under Florida appellate procedure, questions cannot be raised for the first time on

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[8]Appellants virtually concede this issue. They acknowledge that "Standing alone the assertion of the Motion for Rehearing might not be a sufficient preservation of Fourteenth Amendment arguments . . . ." They also concede that "their preservation of federal question number I on the Petition for Rehearing may be minimal . . . ." (Jurisdictional Statement, p. 10)

rehearing. Nelson v. Seldon Cypress Door Co., 78 Fla. 203, 83 So.286 (1919); Cartee v. Fla. Dept. of H. & R. Services, 354 So.2d 81, 83 (Fla. 1st DCA 1978). Questions presented to the highest State court for the first time on rehearing also come too late for consideration by this Court. Radio Station WOW, Inc. v. Johnson, 326 U.S. 120 (1945); Hanson V. Denckla, 357 U.S. 235 (1958). See Beck v. Washington, 369 U.S. 541 (1962). See also Justice Blackmun's concurring opinion in Estate of Wilson v. Aiken Industries, Inc., 439 U.S. 877 (1978).[9]

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[9] "Questions first presented to the highest State court on a petition for rehearing come too late for consideration here, unless the State court exerted its jurisdiction in such a way that the case could have been brought here had the questions been raised prior to the original disposition." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 129 (1945).

The Florida Supreme Court decided no question concerning Section 194.192(2), Florida Statutes. This Court's consideration of the statute would necessarily be advisory and original, not appellate, in nature.

II.

Appellants waived their objections to Section 194.192 (2), Florida Statutes, by voluntarily submitting themselves to its terms and conditions.

A Florida taxpayer may obtain judicial review of a disputed ad valorem tax by either of two methods. He may file an action to contest the tax after paying only the amount which he admits in good faith to be owing, as prescribed by Section 194.171(3), Florida Statutes. (App. 83a-84a) If the court finds that the amount of the tax owed by the taxpayer

is greater than the amount the taxpayer has admitted and paid, the court is required by Section 194.192(2), Florida Statutes, to enter a personal judgment against the taxpayer for the deficiency plus interest. (App. 85a)

As an alternative to such a deficiency action, the taxpayer has the option of paying the entire tax under protest and filing suit for a refund of the amount of the tax in dispute. Willig v. Blake, 358 So.2d 871 (Fla. 3d DCA 1978); Smith v. University Presbyterian Homes, Inc., 390 So.2d 70 (Fla. 2d DCA 1980), approved in Presbyterian Homes, Inc. v. Smith, 408 So.2d 1039 (Fla. 1982). Thus, the Florida taxpayer who objects to the entry of a personal deficiency judgment against him pursuant to Section 194.192(2), may avoid the statute by exercising his option to

file a refund action. However, if the taxpayer prefers to obtain the substantial advantage of paying only that portion of the tax which he admits in good faith to be owing and deferring payment of the balance due until the end of the litigation, he must accept the statutory condition that a personal judgment will be entered against him for any adjudicated deficiency.

In Rosewell v. LaSalle National Bank, 450 U.S. 504 (1981), this Court held that the sole judicial remedy afforded to Illinois ad valorem taxpayers, of paying the tax in full and filing suit for a refund without interest, constitutes a "plain, speedy and efficient remedy" under 28 U.S.C. §1341, the Tax Injunction Act. It necessarily follows that the Florida Legislature was not obliged to

supplement the Florida taxpayer's refund action with the optional deficiency action prescribed in Section 194.171, Florida Statutes. (App. 83a) Nor can the Legislature be faulted for granting that optional means of judicial review on the reasonable and prudent condition that a personal deficiency judgment be entered against the taxpayer in the amount adjudged to be due.[10] Taxes are obligations of the highest character and only as they are

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[10] "It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity of themselves, give the right to an injunction in a court of equity." State Railroad Tax Cases, 92 U.S. 575, 613 (1875).

The simple philosophy derived from the experience of ages is that "the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment." State Railroad Tax Cases, 92 U.S. 575, 613 (1875).

discharged is the continued existence of government possible. Florida C. & P. R. Co. v. Reynolds, 183 U.S. 471 (1902).

III.

Appellants lack standing to complain that all subsurface rights are not separately assessed in other Florida counties.

The Florida subsurface rights statute, Section 193.481, Florida Statutes (App. 81a) provides that separately-owned subsurface rights shall be separately assessed and taxed. That is, instead of combining all interests in the land in a single assessment, the interests of the surface owner and the subsurface owner should be assessed and taxed separately. Subsection (3) provides that the combined assessed values of the surface and subsurface interests shall not exceed the

full just value of the entire parcel of land.[11]

As the trial court declared, (App. 36a) the purpose of the statute is to achieve tax equity between the surface owner and the owner of separated subsurface rights. Straughn v. Sun Oil Co., 345 So.2d 1062 (Fla. 1977); Dickinson v. Davis, 224 So.2d 262, 265 (Fla. 1969).

If a Florida Property Appraiser fails to identify and separately assess a separately-owned subsurface interest, and instead includes the value of the entire fee in a single assessment, the injured party is the surface owner in whose name

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[11]Separate assessment of separately-owned subsurface rights is an exception to the general rule in Florida that the assessment of each parcel of land must include all interests in the property. Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834, 837 (Fla. 1970).

the property is assessed. He is injured because he pays the subsurface owner's tax as well as his own. Other taxpayers, such as the appellants here, suffer no damage or detriment whatsoever. As the Supreme Court of Florida correctly observed in its opinion in this case: (App. 10a)

> "We point out that the property owners suffer no financial detriment whatsoever by virtue of any lack of such separate assessments elsewhere. The lack of such separate assessments merely means that the entire just value is assessed against the surface owner."

Injury sustained by surface owners does not give the appellant subsurface owners standing to complain. The plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties. Warth v. Seldin, 422 U.S. 490, 499 (1975). Constitutional rights are personal and may not be asserted

vicariously. Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973). Any surface owners who sustain injury on account of such assessment errors are not disabled from asserting their own rights.[12]

Appellants' claim here is fundamentally different from that of a taxpayer who complains of other properties which are systematically underassessed or omitted from the tax roll. Under such circumstances,

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[12] If such an assessment error is brought to the attention of the Property Appraiser, he will presumably correct it. If he does not, he can be compelled to do so by mandamus. See State ex rel. Dofnos Corp. v. Lehman, 100 Fla. 1401, 131 So.333 (1930). In the alternative, the surface owner who pays the tax of the subsurface owner may assert an equitable lien against the latter's interest. See McPherson v. Redding, 323 So.2d 687 (Fla. 3d DCA 1976).

The testimony of other property appraisers indicates that few surface owners in those counties have requested separate assessment of subsurface rights. (MD-App. 2 et seq.)

the legally-assessed taxpayer may claim that he has been injured, at least to some small degree, by the increased millage which results from the omission or underassessment of other properties. Here, however, appellants' entire complaint is that some separately-owned subsurface rights in other counties are not separately assessed but are instead included with the surface interest in single, composite assessments. The entire injury resulting from that assessment error is sustained by the surface owner. Other taxpayers, such as appellants, suffer no injury whatsoever.

Appellants lack standing here because they have sustained no injury in fact, economic or otherwise. Data Processing Service v. Camp, 397 U.S. 150 (1970). As this Court said in Roberts & Schaefer

Co. v. Emmerson, 271 U.S. 50 (1926):

> "As this court has often held, one who challenges the validity of state taxation on the ground that it violates the equal protection clause, cannot rely on theoretical inequalities, or such as do not affect him, but must show that he is himself affected unfavorably by the discrimination of which he complains."

This Court also said in Valley Forge College v. Americans United, 454 U.S. 464 (1982), that a party who attacks a state statute must show

> "'. . . . not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.'" (quoting Frothingham v. Mellon, 262 U.S. 447 (1923).

IV.

The judgment of the Florida Supreme Court rests on an adequate non-federal basis.

Appellants' lack of standing to complain of the assessment errors involved here and their lack of injury resulting from such errors, constitute an adequate non-federal basis for the judgment of the Florida Supreme Court. Under Florida law, taxpayers must prove that they have been injured to obtain judicial relief. West Virginia Hotel Corporation v. W.C. Foster Co., 101 Fla. 1147, 132 So. 842 (1931). The Florida Supreme Court applied this rule of Florida law in its judgment under attack here. It expressly held that the appellants "suffer no financial detriment whatsoever" because "The lack of such separate assessments merely means that the entire just

value is assessed against the surface owner." (App. 10a) That adjudication makes it unnecessary and inappropriate to decide any constitutional question.

V.

The appeal does not present a substantial federal question.

Appellants' case falls far short of meeting the strict requirements for demonstrating a violation of the equal protection clause of the 14th Amendment in local property taxation. Intentional and systematic underassessment of other property in the same class by state officials violates the right of equal protection of a taxpayer whose property is assessed at full value. Sunday Lake Iron Company v. Township of Wakefield, 247 U.S. 350 (1918); Cumberland Coal Company v. Board of Revision, 284 U.S. 23

(1931). The equal protection clause protects the taxpayer who is "singled out" for discriminatory treatment by an assessment at a higher level than other property in the same class. Township of Hillsborough v. Cromwell, 326 U.S. 620 (1946); Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1932). The good faith of state taxing officials is presumed, Sunday Lake Iron Company v. Township of Wakefield, supra, and the complaining taxpayer has the burden of establishing the unconstitutionality of his assessment. Charleston Federal Savings & Loan Association v. Alderson, 324 U.S. 182 (1945); Sunday Lake Iron Company v. Township of Wakefield, supra. He must show that any inequality is the result of intentional and systematic undervaluation and not mere mistakes or errors of judgment. Id. Unless it is

shown that under-evaluation was intentional and systematic, unequal assessments do not violate the equal protection clause. Southern Railway Company v. Watts, 260 U.S. 519 (1932).

Appellants do not meet these tests. The evidence falls far short of a showing of intentional and systematic discrimination throughout any taxing unit. Nor are appellants in any sense "singled out" for discriminatory treatment. Lack of statewide uniformity in property tax administration does not violate the equal protection clause where there is no showing of intentional and systematic discrimination. Southern Railway Company v. Watts, 260 U.S. 519 (1932); Hess v. Mullaney, 213 F.2d 635 (9th Cir. 1954), cert. den.

348 U.S. 836 (1954).[13]

Appellants also failed to prove any systematic underassessment of other properties.[14] That feature of this case makes it closely similar to Liggett Company v. Lee, 288 U.S. 517 (1939), in which Florida taxpayers complained of discriminatory administrative enforcement of an excise tax. Because an excise tax was involved, the Liggett case is similar to this one in that improper administration of the tax did not increase the plaintiff taxpayer's

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[13]The Watts and Hess cases, both of which involve alleged lack of statewide uniformity of tax administration, clearly refute the appellants' contentions here.

[14]Appellants acknowledged this in their motion for rehearing in the Supreme Court of Florida, in which they said, "The question of comparative inequality of assessed values is not even involved . . . . " (Emphasis in original.) (App. 65a)

tax. The rate of an excise tax is not increased by a lack of uniform enforcement. Moreover, mandamus provides a more effective remedy for the kind of clear legal error in tax administration that is involved in a failure to enforce an excise tax, than it does to remedy underassessment of other properties, for the latter kind of error involves the discretion of assessing officers.[15] In Liggett, this Court held that the appellants were not entitled to have their taxes cancelled because the tax was enforced against them but not against other taxpayers. The Court held that Florida law afforded appellants an adequate remedy in the form

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[15] Similarly, mandamus would clearly lie to compel a recalcitrant property appraiser to make separate assessments of subsurface rights which are shown to be separately-owned.

of a mandamus action. This Court said:

> "Under the law of Florida every unit of the taxpaying public has an interest in having all property subject to taxation legally assessed, and may in behalf of himself and others in like situation require that all property subject to taxation be placed on the tax books and bear its proportionate part of the expense of government. The appellants, if they deem the tax illegally omitted in certain cases, may apply for a writ of mandamus to compel the taxing officials to do their duty. State ex rel. Dofnos Corp. v. Lehman, 100 Fla. 1401, 131 So.333. Failure to collect the tax from some whose occupations fall within the provisions of the act, cannot excuse the appellants from paying what they owe. And certainly the remedy afforded by state law assures them equal treatment along with all others similarly situated."

The kind of imperfect local tax administration revealed here does not violate the 14th Amendment. States have large leeway where taxation is concerned and no specific right apart

from equal protection is imperiled. Lehnhausen v. Lakeshore Auto Parts, 410 U.S. 356 (1973). This Court has recognized that no scheme of taxation has been devised which is free of all discriminatory impact and that "the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause." San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 41 (1973). This Court has also rejected demands for absolute equality in state taxation which would require "error-free administration that even the best procedures could not guarantee." Rosewell v. LaSalle National Bank, Trustee, 450 U.S. 503 (1981). This Court recognizes that local taxation may be administered by local governmental units and that

the equal protection clause does not impose any "per se rule of 'territorial uniformity.'" San Antonio School District v. Rodriguez, supra at 55.

The cancellation of appellants' valid taxes would impair rather than enhance tax equality in Florida. Appellants have not demonstrated that any Florida property is omitted or undervalued; they have merely shown that some subsurface rights are not separately assessed. The judicial removal of appellant's properties from the tax roll would discriminate unfairly against other Florida taxpayers.

CONCLUSION

For the above reasons, the appeal should be dismissed or the judgment of

the Supreme Court of Florida should be affirmed.

Respectfully submitted,

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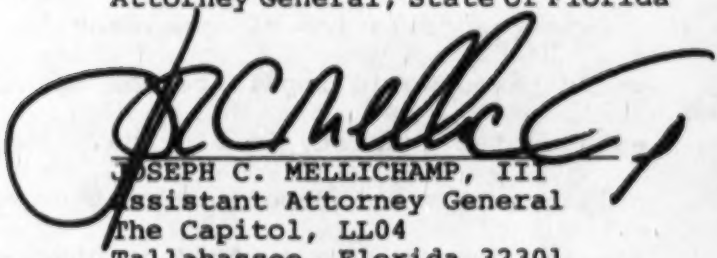

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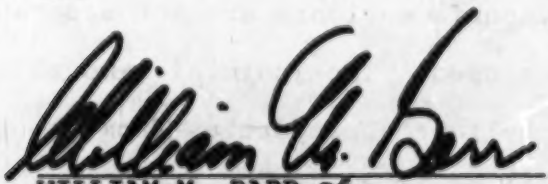

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APPENDIX

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1. Appellants' Prayer for Relief in Civil Action No. 75-4401-01 (R.8)

WHEREFORE, plaintiffs pray that this court will take jurisdiction of this cause and the parties thereto; that this court will find and decree that the said assessment of plaintiffs' property is unlawful and void both as to the assessment under the law and procedure followed and as to the valuation under all the circumstances; that the court will find and decree that the assessment violates the rights of the plaintiffs under the Florida Constitution and the Statutes of Florida as well as the Fourteenth Amendment of the Constitution of the United States; that alternatively the court declare the pertinent Florida Statutes to be unconstitutional and void; that the court will enjoin the

collection of taxes over and above the amount plaintiffs already have paid and will order the County of Volusia, Florida and the proper officials to refund the taxes paid under protest under said void assessment.

2. Excerpts from testimony of the following witnesses adduced at the trial held in Daytona Beach, Florida, on September 15, 1980:

a. Excerpts from testimony of FORD S. HOUSEMAN, Property Appraiser of Orange County, Florida.

(T. 173)

A. Very likely that there might be some mineral rights contained in the wording of old deeds, but they're not separate.

Q. Now, have you made any independent search to try to find such mineral rights if they exist?

A. No, sir, we have not. It's not required.

* * *

(T. 175-176)

Q. But I thought, sir, you told me that you did not search for the last ten

years to see if they had been severed.

A. That's exactly what I said.

I said they would have had to have been recorded or conveyed for us to find them as a separate deed or a separate entity.

Q. Do you know whether or not any of them were recorded as a separate entity in the last ten years?

A. They were not or we would have had them. We would have found them.

A. Did you make a search for them?

A. You don't have to make a search. They would have come through the regular process of all deeds.

Q. What is that process?

A. Each hard copy of every deed that's recorded in Orange County comes to our attention daily.

Q. All right. And so if Mr. Ford had purchased separate mineral rights in

Orange County within the last ten years, it's your testimony that you would have had to have caught it by the virtue of your system.

A. That's correct.

b. Excerpts from testimony of JOHN E. KNOWLES, Chief Appraiser in the office of the Property Appraiser of Seminole County, Florida.

(T. 177-178)

Q. Are you familiar with Section 193.481, Florida Statutes, pertaining to assessment of mineral rights?

A. Yes, I am.

Q. Can you tell me what is done in Seminole County towards the implementation of that statute?

A. If we are requested to do so, we separate the mineral rights from the fee.

Or if we become aware of a separation of the mineral rights from the fee, we do so without being requested.

* * *

(T. 178)

Q. Have you made a -- what efforts have you made, independent efforts, if

any, to uncover or search out mineral rights, privately held mineral rights, in Seminole County?

A. We have made almost no effort to discover this.

Q. Do you know how many parcels, roughly, you have on the tax rolls?

A. Yes. Only two at the present time.

* * *

(T. 184)

Q. All right. Is it your intention, sir, if you discover or are made aware of other mineral rights property in your community, in Seminole County, to also place it on the rolls?

A. Yes, sir.

c. Excerpts from testimony of RUDY MUCKENFUSS, Property Appraiser of Marion County, Florida.

(T. 190 - 191)

Q. How is that [Section 193.481] implemented in Marion County?

A. In Marion County we don't separate the mineral rights away from the rest of the property. They're all assessed together.

We have about four parcels that -- where people requested or filed returns on mineral rights, but we don't make any attempt to separate these mineral rights on the roll.

* * *

Q. And have any of those been acted upon by separate assessment of mineral rights?

A. No, sir.

We checked them out and we found

that the mineral rights that were being requested -- some of them overlapped with Deltona Corporation's large subdivision, and their property has already been cleared.

We have made no attempt or -- to go ahead and find out the total mineral rights in Marion County, who are the owners of the mineral rights.

Q. No search, then -- is that what you're telling me? -- to determine who owns mineral rights in Marion County.

A. We don't have the time or the personnel to go ahead and find out who the rightful owners of mineral rights are.

d. Excerpts from testimony of ED HAVILL, Property Appraiser of Lake County, Florida.

(T. 194-195)

Q. Are there separately held mineral rights that are assessed in Lake County?

A. Yes, there are.

Q. All right, sir. By what procedure do they become assessed on your rolls?

A. Basically the owner requests a mineral rights cutout, or someone comes in and claims the mineral rights and fills out a mineral rights form.

And we will assess the property separately for the mineral rights.

Q. Have you made any independent search of the titles of the county to determine outstanding mineral rights?

A. No, I haven't.

Q. Do you know whether it was done

before you took office?*

A. No, I don't.

* * *

(T. 195)

Q. Is the request by landowners the only method by which you have placed these minerals on the tax rolls?

A. Yes, sir. Or if they have been carried forward in years past, if it's been assessed in prior years, we'll just keep on assessing it until someone comes in and says it's been transferred or whatever.

It's basically a static situation in my county.

---

* Mr. Havill had held his office about three years, since January, 1977. (T. 194)

e. Excerpts from testimony of FRANK JOHNS, Assistant Property Appraiser of Brevard County, Florida.

(T. 203)

Q. Are there any separately held mineral rights that are taxed in Brevard County?

A. Yes, sir, there is.

Q. And do you know how many and what -- how many acres or what?

A. There's in excess of 400 acres assessed separately from the surface rights.

Q. All right, sir. What led to the assessment of those mineral rights?

A. Well, this came about several years ago on request of the parties that retained the mineral rights. And they contacted our office and asked that we create a tax bill for them on their ownership of the mineral rights reserved

in their deed.

* * *

(T. 206)

Q. Have you searched to find whether there are any independent sales or releases of mineral rights?

A. Yes, sir. No real in depth but to some degree here in the last few days.

Q. Since you and I talked on the phone?

A. Yes, sir.

Q. All right, sir. Did you find any?

A. No, sir.

* * *

(T. 220-221)

And -- however, if a deed comes through and it makes this point as to the reservation of these mineral rights, I instructed our personnel many months ago

to bring it to my attention and that we will comply with the statute.

But to do research on all the history of the chain of titles in Brevard County, I guess we're in the same position as many other counties are. It's just a personnel and time problem."

f. Excerpts from testimony of WILLIAM L. PRITCHETT, JR., Property Appraiser of Putnam County, Florida.

(T. 224)

Q. Have you ever done a search to determine whether there are any separately held mineral rights in Putnam County?

A. No, I haven't.

Q. Have you ever observed any deeds or conveyances that would indicate that there are such mineral rights?

A. I am aware that there are some separately held mineral rights in the county.

I would say that the transfer of mineral rights is a fairly rare occurrence in our county.

Q. Why have you not put the statute into effect? I mean 193.481 pertaining to taxation of mineral rights.

A. Frankly, since I was in a position

to do so, which was only since the first of February, there have been a number of other problems in the office, if you will, that seem to take a great deal more importance, number one.

Number two, I think that we would probably have some difficulty in placing a value on mineral rights within Putnam County because of the rarity of a transfer of ownership and -- which would make valuation a difficult process.

g. Excerpts from testimony of JOHN SEAY, Property Appraiser of Flagler County, Florida.

(T. 229-230)

Q. Are you familiar with Florida Statute 193.481 pertaining to the assessment of mineral rights?

A. Yes, sir.

Q. All right, sir.

Now, how is that implemented in Flagler County?

A. As I recall, the statute requires the property appraiser to separately assess subsurface ownership on mineral rights that are owned separate from the surface or the fee.

In Flagler County many subsurface owners -- or some subsurface owners have returned for taxation their subsurface ownership, which we have assessed. Others we have abstracted from public

records, which we have assessed.

Q. All right, sir. Have you made an independent search of the public records of Flagler County to determine that you have all the separately held mineral rights assessed?

A. No, sir.

Q. Have you considered doing that?

A. Yes.

Q. And was that when this statute came into effect, approximately?

A. Subsequent to the enactment of the statute I looked into it at some length.

I got -- I asked for prices from the abstract companies locally to determine the economic impact of the statute. And I couldn't get a price from any local abstract company to abstract the records for us.

I didn't have the staff to totally

abstract the records. Consequently, it wasn't done.

CERTIFICATE OF SERVICE

I DO CERTIFY that three (3) copies of the foregoing Motion to Dismiss or Affirm were furnished this 29th day of March, 1984, by mail, in accordance with Supreme Court Rule 28.3, to each of the following counsel, who represent all of the parties required to be served.

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Appellant's Reply Brief

Office - Supreme Court, U.S
FILED
APR 13 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1193

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

FRANK A. FORD, ETC., *et al.*,
Appellants,

v.

DEPARTMENT OF REVENUE, STATE OF FLORIDA, ETC., *et al.*,
Appellees.

On Appeal from the Supreme Court of the State of Florida
(Alternative Petition for Certiorari)

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

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BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM

STATEMENT

This Brief Opposing Motion to Dismiss or Affirm is furnished pursuant to Supreme Court Rule 16.5.

As to argument in Appellees' Statement concerning the evidence, this Court need only examine the findings of the trial Court and the opinions below. It was the Florida Supreme Court which said:

> "The district court opinion explored in detail the legislative provisions which outline the responsibilities of the Department of Revenue in regards to ad valorem taxation. We agree with the court's conclusion that the Florida Department of Revenue is clearly charged with implementing the legislature's intention that Florida's ad valorem taxation laws are enforced, implemented and administered uniformly throughout the state. § 195.027(1), Fla. Stat. (1981). Central to this duty is the Depart-

> ment's responsibility of supervising Florida property appraisers and other local taxation officials and ensuring that they comply with the laws which govern the assessment, collection and administration of ad valorem taxes. The evidence clearly supports the conclusion of both the trial judge and the district court that the Department had taken no serious or effective action to require all Florida property appraisers to comply with the requirement of section 193.481 to assess subsurface interests in or to real property. . . ."

The testimony quoted in MD-App. 3a-19a shows a failure of appraisers to perform mandatory duties and inferentially a failure of the Department to see that the duties are performed, in the face of other evidence which showed that there are huge acreages of separately owned mineral rights in those counties. Omitted testimony of the appraisers, with other evidence, also shows absence of uniformity in valuation by virtue of failure of the Department to establish criteria, "standards of value" which are "prima facie correct", as it is required to do pursuant to Section 195.032, Florida Statutes. (App. 87a). Appellants do not believe it necessary to quote testimony to this Court in view of the discussion of the valuation aspect of this cause by the trial court, and by the Fifth District Court of Appeal at App. 22a-25a. Particularly is this so because the Fifth District Court and the Florida Supreme Court, when there are separate assessments, both specifically spoke to the question of valuation at a level higher than the general level of assessment of substantially all other similar property in the taxing district. (Quotations at pages 7 and 8 of Jurisdictional Statement.)

The argument in Appellee's Statement, concerning requests for separate assessment, is a smokescreen. Florida previously has decided that the duty to perform the function of assessment cannot be hinged upon the requests of surface owners that separately held mineral rights be

assessed separately, that history of the law having been summarized in the opinion of the Fifth District Court of Appeal. See also *Cassady v. Consolidated Naval Stores Company*, 119 So.2d 35 (Fla. 1960).

ARGUMENT

(Numbered to correspond to arguments in the Motion)

I

The argument on pp. 13 and 14 of the Motion To Dismiss Or Affirm shows why this Court has plenary jurisdiction. The Supreme Court of Florida *did* exert its jurisdiction in such a way that the cause could have been brought here had the question been raised prior to the Florida Supreme Court's opinion. The cause was *not* remanded to the Fifth District Court for further consideration of questions that had not been decided at that level.

Appellants won their case in the Fifth District Court of Appeal of Florida. That judgment was *not* appealable to the Florida Supreme Court, and the Florida Supreme Court only considered the cause on an application for review. See App. 75a for the Order of the Supreme Court of Florida, dated December 29, 1982, construing the Notice of Appeal, which had been filed by the Department of Revenue, as an application for review. The appellants here were free to argue, as Respondents in the Supreme Court of Florida, that the District Court judgment was correct on grounds other than as stated by the District Court; but constitutional invalidity of Section 194.192(2), Florida Statutes, as to personal judgments, furnished no basis for arguing that the District Court was correct in holding that the *assessments were void*.

It is true that Florida does not permit matters to be raised for the first time in a Motion For Rehearing. Thus the taxpayers were trapped by the Florida Supreme Court judgment which ordered reinstatement of the per-

sonal judgments and by procedure which does not permit new questions to be raised on application for rehearing. Rehearing was denied without opinion.

As conceded in the Jurisdictional Statement, the Appellants' equal protection arguments on this narrow issue were minimal, but not totally lacking, particularly in view of their major reliance throughout this litigation on the bastion of Fourteenth Amendment equal protection.

II

This Court, in *Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981), sharply divided, held that Illinois could require, as the sole remedy, the payment of disputed taxes and a claim for refund. That procedure, however, is not the plain, speedy, and efficient statutory remedy which has been provided by Sections 194.171 and 194.181, Florida Statutes.

Florida cases do not show that Florida taxpayers have entirely optional methods of proceeding. The argument on p. 16 of the Motion To Dismiss Or Affirm, pertaining to Florida law, is not sustained by the cases there cited.

Willig v. Blake, 358 So.2d 871 (Fla. 3d DCA 1978) shows that Section 194.171, Florida Statutes, establishes the procedure whereby a taxpayer, upon suing to contest his assessment, need pay only the amount admitted in good faith to be owed. The taxpayer in that case filed his suit on the same day he paid the full amount of the tax without protest, which subjected the taxpayer to summary judgment.

The case of *Smith v. University Presbyterian Homes, Inc.*, 390 So.2d 79 (Fla. 2d DCA 1980), approved by the Supreme Court of Florida at 408 So.2d 1039, stands for the proposition that if a taxpayer's suit results in a judgment for a refund, the taxpayer is not entitled to pre-judgment interest.

The sixty-day provision of Section 194.171(2), Florida Statutes, is jurisdictional, and not a statute of limita-

tions. See *Department of Revenue v. Goembel*, 382 So.2d 783 (Fla. 5th DCA 1980), particularly headnotes 3 and 4.

There is some law in Florida indicating that the limitation period does not apply where assessments are charged to be unauthorized and void. See, for instance, *Hansen v. Port Everglades Steel Corporation*, 155 So.2d 387 (Fla. 2d DCA 1963), where a distinction was made between property immune from taxation and taxable but exempt property. See also *Overstreet v. Ty-Tan, Inc.*, 48 So.2d 158 (Fla. 1950), concerning property which was not subject to taxation, where the court referred to taxes "devoid of any legal basis". These cases do not provide unlimited options of attack. These cases do not govern all, if any, of the claims made by the taxpayers.

The claims in the cases before this Court ranged from the contention that the assessments were bad because the assessor failed to follow statutory criteria of Section 193.011, Florida Statutes, and claims under the Florida "greenbelt" law, Section 193.461, Florida Statutes, to contentions that Section 193.481 was void under Florida law, and to further contention that the assessments were void under the Fourteenth Amendment. The taxpayers properly joined all their claims in different counts in the same litigation and in fact paid an amount of taxes they admitted as due.

Waiver is generally described as the intentional relinquishment of a known right. No intentional waiver is shown. The question of unreasonable classification inherent within Section 194.192(2) with regard to imposition of personal judgments, as statutory penalization for assertion of one's rights, remains.

III

The argument of Appellees fails to discern that the surface owners in other counties, who are wrongfully taxed on separately held mineral rights which they do

not own, are not in the same class of taxpayers as are the Appellants here. Rather, it is the owners of separately held mineral rights in those counties who are in the same class as the appellants.

Appellee's Argument III overlooks the fact that Question II of the Jurisdictional Statement addresses both the omission to tax others and taxation at different, arbitrary levels of assessment. The injury to appellants lies in the fact that they are taxed, while others in their class are given a free ride or taxed at a lower level of assessment in other counties within the taxing district.

Unequal application of a valid state law may deny equal protection. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-374 (1886); and *Zeigler v. Jackson*, 638 F.2d 776 (5th Cir. 1981). The state may not arbitrarily choose to enforce its laws against some and not others of the same class.

Perhaps it is true that surface owners in other counties could attack their own assessments. It is perfectly obvious that the owners of separately held subsurface interests in other counties, who are given the free ride, will not bring suit to force the taxing authorities to bring them under the blanket of taxation. The failure of others to bring suit to attack their assessments, or to subject themselves to taxation, cannot serve to deprive appellants here of constitutional protection nor of standing to assert their rights.

Further, old Florida cases dealing with mandamus are suspect. As pointed out on page 16 of the Jurisdictional Statement, the Florida Supreme Court, in the decision sought to be reviewed, extended the application of the case of *Straughn v. GAC Properties, Inc.*, 360 So.2d 385 (Fla. 1978). In that case, the Florida Supreme Court had held that a taxpayer has no cause of action against the Department of Revenue to compel equalization of ad valorem tax valuations. Now the Florida Supreme Court

has said that the Appellants here have no cause of action to compel compliance with the law where taxing authorities in other counties utterly refuse to tax separately held subsurface interests, or tax on lower levels of assessment. See App. 9A for this holding by the Florida Supreme Court. *The burden of seeing that the Department performs its duty is not on appellants anyway.*

Florida Statutes, Sections 194.171 and 194.181 provide a remedy for contesting assessments, which appellants did. The Florida Supreme Court did not rule that the appellants lacked standing.

IV

The plain, speedy and efficient remedy envisioned in 28 U.S.C. § 1341 requires that federal rights as to assessments first be considered by state courts and preserved. Preserved for what, except this United States Supreme Court? Procedural requirements, and prudence, dictate that state and federal claims all be asserted in the litigation.

The trial court made a direct holding that there was no Fourteenth Amendment violation. The Supreme Court of Florida approved that holding; so there is a direct ruling on the question, notwithstanding the Supreme Court of Florida did not mention federal rights.

State power affords no basis for denial of federal rights by clothing the denial in the guise of state law, or in silence. Such approach would sound the death knell for federal rights. Constitutional rights of a taxpayer are denied as well by refusal of a state court to decide a question as by erroneous decision of it, the discriminatory assessments in either case being left intact. See *Lawrence v. State Tax Commission*, 286 U.S. 276, 282, 283. The decision below is inconsistent with the asserted federal rights.

Where a non-federal ground is interwoven with the federal rights so as not to be independent, then this

court's jurisdiction is plain. *Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U.S. 157, 164. To be adequate, a state law ground must be broad enough to sustain the judgment without regard to the federal rights. That is the antithesis of what we have here, where a reversal as to the federal rights asserted would require reversal of the judgment sought to be reviewed.

V

The argument that there is no substantial federal question is frivolous. The Department disparaged Fourteenth Amendment rights, in its brief before the Supreme Court of Florida, as a "massive brouhaha"; but Fourteenth Amendment rights should not be treated so cavalierly.

The trial court determined that through the failures of the Department, identically situated taxpayers in other counties within the District were deliberately and systematically omitted from taxation. The trial court considered the lack of assessment criteria. The district court reversed the trial court on his own findings of fact in a holding which covered both aspects of Appellants' question II—that is, the omission to tax others similarly situated and also different levels of assessment, where such others are taxed. The Supreme Court of Florida also spoke to both aspects of Appellants' question II in the opinion which reversed the district court and ordered reinstatement of the trial court judgment.

The appellants in these causes not only have complained of the fact others similarly situated are not taxed, but vigorously have complained of the fact that the failure of the Department to establish valuation criteria pursuant to statute has resulted in a want of uniformity of assessment where there is taxation of separately held mineral rights. This aspect of question II is stated on page ii of the Jurisdictional Statement and in the middle paragraph of page 15 of the Jurisdictional

Statement. A failure to establish standards of value is not the same question as valuation discretion under those standards. All three courts below ruled that the Department has failed to perform its duties under Florida law.

There is a three judge federal district court case from the State of Alabama which bears some similarity to the present case. That is the case of *Weissinger v. Boswell*, 330 F.Supp. 615 (D.C. Ala. 1971), which examined a Fourteenth Amendment claim, beginning at page 621 of the Reporter. The case involved a disparity in assessments where the lack of uniformity had resulted from the intentional and systematic refusal of the Commissioner of Revenue of Alabama (somewhat analogous to the Department of Revenue of Florida), to perform his duties in accordance with state law. It was held that there resulted a Fourteenth Amendment violation.

Many of the cases cited by Appellees under their Argument V were cited and relied upon by the Appellants in the Jurisdictional Statement. They conclusively show that a taxpayer's right to Fourteenth Amendment equal protection presents a substantial federal question.

CONCLUSION

Respectfully, the Motion to Dismiss or Affirm should be denied.

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